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Labor

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29

PARTS 0 TO 99
Revised as of July 1, 1982

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code of federal regulations

Labor

29

PARTS 0 TO 99

Revised as of July 1, 1982

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I

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Cite this Code CFR

thus: 29 CFR 0.735-1

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, July 1, 1982), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

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Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to take steps to reduce the Federal paperwork burden for individuals, small businesses and State and local governments, as well as to maximize the usefulness of information collection. One specific requirement of the Act is for Federal agencies to display an OMB control number with the information collection request.

Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of Presidential documents appears at the end of each compilation of Title 3, The President.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

JOHN E. BYRNE,
Director,
Office of the Federal Register.

July 1, 1982.

THIS TITLE

Title 29—LABOR is composed of seven volumes. The parts in these volumes are arranged in the following order: Parts 0-99, Parts 100-499, Parts 500-899, Parts 900-1899, Parts 1900-1910, Parts 1911-1919, and Part 1920 to end. The contents of these volumes represent all current regulations codified under this title as of July 1, 1982.

Subject indexes appear following the occupational safety and health standards (Part 1910) and following the safety and health regulations for: Longshoring (Part 1918), Gear Certification (Part 1919), and Construction (Part 1926).

Redesignation tables appear in the Finding Aids section of certain volumes.

For this volume Linda A. Rice-Johnston was the Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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Title 29—Labor

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CROSS REFERENCES: Railroad Retirement Board: See Employees' Benefits, 20 CFR Chapter II.

Social Security Administration, Department of Health and Human Services: See Employees' Benefits, 20 CFR Chapter III.

NOTE: Other regulations issued by the Department of Labor appear in 20 CFR Chapters I, IV, V, VI, VII; 41 CFR Chapters 29, 50, 60. For Standards for a Merit System of Personnel Administration: See 5 CFR Part 900, Subpart F.

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APPENDIX A

AUTHORITY: E.O. 11222; 3 CFR, 1964-1965 Comp., p. 306; 5 CFR 735.104; 18 U.S.C. secs. 201 through 209.

SOURCE: 33 FR 10432, July 20, 1968, unless otherwise noted.

Subpart A—General

§ 0.735-1 Purpose and scope.

(a) This part is designed to implement provisions of Executive Order 11222 of May 8, 1965, "Prescribing Standards of Ethical Conduct for Government Officers and Employees," and 5 CFR 735.101 et seq. It prescribes standards of conduct for employees of the Department of Labor relating to conflicts of interest arising out of outside employment, private business and professional activities, and financial interests. It sets forth requirements for the disclosure of such interests by Department employees. In addition, it states basic principles regarding employees' conduct on the job and the ethics of their relationship to the Department as their employer. The head of an administration, bureau, or office may with the approval of the Solicitor, adopt additional standards and procedures, not inconsistent with this part. Any such additional standards and procedures shall be furnished in writing to the employees affected. This part applies to all regular and special Government employees except to the extent otherwise indicated herein. For the purpose of this part:

(1) "Regular employee" means an officer or employee of the Department of Labor, but does not include a special Government employee.

(2) "Special Government employee" means an officer or employee of the Department of Labor who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis.

(3) "Employee" means a regular and a special Government employee.

(4) The terms "bureau" and "office", except where otherwise indicated, mean a bureau or office which is not a part of a larger administrative subdivision within the Department of Labor.

(b) This part, among other things, reflects prohibitions and requirements imposed by the criminal and civil laws of the United States. However, the paraphrased restatements of criminal and civil statutes in no way constitute an interpretation or construction thereof that is binding upon the Federal Government. Moreover, this part does not purport to paraphrase or enumerate all restrictions or requirements imposed by statutes, Executive orders, regulations or otherwise upon Federal employees. The omission of a reference to any such restriction or requirement in no way alters the legal effect of that restriction or requirement.

§ 0.735-2 Counseling service.

(a) The Solicitor has been designated counselor to the Department in matters within the scope of the regulations in this part. Deputy counselors designated by the Solicitor will be available to consult with employees on questions relating to ethics, conduct, and conflict of interest. Employees are expected to familiarize themselves with the regulations in this part, the laws and regulations on which they are based, and the supplementary instructions issued by the administrations, bureaus, and offices in which they work. Attention of all employees is hereby directed to the statutes set forth in 5 CFR 735.210 (see Appendix A to this part). Attention of employees of the Office of Labor-Management and Welfare-Pension Reports is hereby directed to section 15(b) of the Welfare and Pension Plans Disclosure Act, which prohibits any Department employee from administering or enforcing the Act with respect to any employee organization in which he is a member or employer organization in which he has an interest. Employees who need clarification of the standards of conduct, and related laws, rules, and regulations should consult a deputy counselor.

(b) Each head of an administration, bureau, or office is responsible for application of the standards of conduct to employees under his jurisdiction. He is responsible for assuring that his employees are furnished copies of the regulations in this part not later than 90 days after their approval by the Civil Service Commission. Each new employee shall be furnished such a copy no later than the time of his entrance on duty. The heads of administrations, bureaus, and offices shall assure that employees are advised of the times and places where counseling services are available and the names of the deputy counselors. They shall assure that the regulations in this part are brought to the attention of each employee at least annually and at such other times as circumstances warrant. The heads of administrative subdivisions within the Office of the Secretary which are not a part of larger administrative subdivisions within such Office are responsible for application of the standards of conduct to employees under their jurisdiction and for carrying out the other functions set forth in this section.

§ 0.735-3 General.

(a) Failure of an employee to comply with any of the standards of conduct set forth in this part shall be a basis for such disciplinary or other remedial action as may be appropriate to the particular case. Such remedial action may include, but is not limited to:

(1) Changes in assigned duties;

(2) Divestment by the employee of his conflicting interest;

(3) Disciplinary action; or

(4) Disqualification for a particular assignment.

(b) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, regulations, and applicable agreements between the Department of Labor and employee organizations.

(c) The head of an administration may delegate authority under the regulations in this part. Delegations shall be at the highest practicable level. Delegations of final authority shall be in writing, in accordance with § 0735.1(a), and any such delegations to employing bureaus or offices within such administrations shall be made to no individual lower than the head or acting head of such bureau or office.

Subpart B—Conduct

§ 0.735-4 General.

(a) The effectiveness of the Department of Labor in serving the public interest depends upon the extent to which the Department and its employees hold the public confidence. Employees are therefore required not only to observe the requirements of Federal laws, policies, orders, and regulations governing official conduct, they must also avoid any apparent conflict with these requirements. Each employee shall avoid situations in which his private interests conflict or raise a reasonable question of conflict with his public duties and responsibility. An employee shall avoid any action, whether or not specifically prohibited, which might result in or create the appearance of using public office for private gain, giving preferential treatment to any person, impeding Government efficiency or economy, losing complete independence or impartiality, making a Government decision outside of official channels, or affecting adversely the confidence of the public in the integrity of the Government.

(b) Employees must conduct themselves in such manner that the work of the Department is effectively accomplished. They must observe the requirements of courtesy, consideration and promptness in dealing with or serving the public and the clientele of the Department. Although it is the policy of the Department of Labor not to restrict or interfere with the private lives of its employees, each employee is expected to conduct himself at all times so that his actions will not bring discredit on the Department or the Federal service. Employees shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government.

§ 0.735-5 Nondiscrimination.

No employee in this Department while in the performance of his duty may discriminate against any other employee or applicant for employment because of race, color, religion, national origin, sex, or age.

§ 0.735-6 Indebtedness.

The Department of Labor considers the indebtedness of its employees to be essentially a matter of their own concern. The Department of Labor will not be placed in the position of acting as a collection agency or of determining the validity or amount of contested debts. Nevertheless, failure on the part of an employee without good reason and in a proper and timely manner to honor his just financial obligations; that is, debts acknowledged by him to be valid or reduced to judgment by a court or to make or to adhere to satisfactory arrangements for the settlement thereof may be the cause for disciplinary action. In this connection each employee has a special obligation to meet his responsibilities for payment of Federal, State, and local taxes. For the purpose of this section, "in a proper and timely manner" means in a manner which the Department determines does not, under the circumstances, reflect adversely on the Government as his employer.

§ 0.735-7 Gambling, betting, and lotteries.

An employee shall not participate, while on Government owned or leased property or while on duty for the Government, in any gambling activity, including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

(a) Necessitated by an employee's law enforcement duties; or

(b) Under section 3 of Executive Order 10927 and similar agency-approved activities.

§ 0.735-8 Misuse of official information.

Employees may not, except with specific permission or as provided in § 0.735-11 in regard to teaching, lecturing, or writing, directly or indirectly use or allow the use of official information for private purposes or to further a private interest when such information is not available to the general public; nor may employees disclose official information in violation of any applicable law, Executive order, or regulation.

§ 0.735-9 Misuse of Federal property.

An employee shall not directly or indirectly use or allow the use of Government property, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve such property and shall obey all rules and regulations applicable to its use.

§ 0.735-10 Partisan political activities.

Employees are expected to observe the prohibitions on political activities set forth in subchapter III of chapter 73 of title 5, United States Code; 18 U.S.C. 602, 603, 607, and 608; and Civil Service Rule IV, Title 5 Code of Federal Regulations section 4.1. Explanations of the restrictions are set forth in the Employee Handbook, U.S. Civil Service Commission Pamphlet No. 20, and in the Federal Personnel Manual.

Subpart C—Outside Interests, Employment, Business and Professional Activities

§ 0.735-11 General.

(a) In the absence of restrictions made necessary by a Department employee's public responsibilities, he is entitled to the same rights and privileges as all other citizens. There is therefore no general prohibition against Department employees holding jobs, financial interests, or engaging in outside business or professional activities. Indeed, such outside activities as teaching, lecturing, and writing are generally to be encouraged since they frequently serve to enhance an employee's value to the Government as well as to increase the spread of knowledge in our society. The employing administration, bureau, or office, may, however, impose reasonable restrictions upon such activities where appropriate and in accordance with § 0.735-1. In addition, an employee may not, whether for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Civil Service Commission or Board of Examiners for the Foreign Service, that is dependent on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request or when the head of his employing administration, bureau, or office gives written authorization for the use of nonpublic information on the basis that its use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401 of Executive Order 11222 of May 8, 1965, shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of his agency, or which draws substantially on official data or ideas which have not become a part of the body of public information.

(b) No employee of the Department of Labor may accept any outside employment, engage in any outside business, professional, or other activity, or have financial interests if such employment, activity, or interests would be or appear to be in substantial conflict with the interests of the Department or the Government, would interfere with the performance of official duties, would prevent a regular employee from rendering full-time service to the Department or require so much time that his efficiency is impaired, or if such employment, activity, or interests would bring discredit on the Department or the Government. In addition, no employee may engage, directly or indirectly, in a financial transaction as a result of, or relying primarily on, information obtained through his Government employment.

(c) No employee may use or appear to use his Government employment to coerce any person, enterprise, company, association, partnership, society, or other organization or instrumentality to provide financial benefit to himself or another person.

§ 0.735-12 Conflict-of-interest laws.

Sections 201 through 209 of title 18, United States Code, prohibit and provide criminal penalties for certain acts by Government employees involving conflict-of-interest situations, including limited exceptions for special Government employees. These provisions include the following prohibitions:

(a) Section 203, in general, prohibits a Federal employee from soliciting, receiving, or agreeing to receive compensation for services rendered on behalf of another before a Government department or agency in relation to any particular matter in which the United States is a party or has a direct and substantial interest.

(b) Section 205, in general, prohibits a Federal employee from acting as agent or attorney for prosecuting any claim against the United States or acting as agent or attorney for anyone before any Federal courts or agencies in connection with any particular matters in which the United States is a party or has a direct and substantial interest. It also prohibits him from receiving any gratuity, or any share of or interest in any claim against the United States in consideration of assistance in the prosecution of such claim.

(c) Section 208, in general, prohibits a Government employee in his official capacity from participating personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, or otherwise in any particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner, or employee or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment has a financial interest. In accordance with the provisions of section 208(b)(2), the financial interests described below are hereby exempted from the prohibition of 18 U.S.C. 208 as being too remote or too inconsequential to affect the integrity of an employee's services in a matter: the policy holdings in an insurance company and the stock or bond holdings, in a mutual fund, investment company, or bank which owns an interest in an entity involved in the matter: *Provided,* That in the case of a mutual fund, investment company, or bank the fair value of such stock or bond holding does not exceed 1 percent of the value of the reported assets of the mutual fund, investment company, or bank. In addition, the prohibitions of section 208(a) shall not apply if the employee obtains advance clearance in accordance with the requirements of sections 208.

(d) Section 209, in general, prohibits regular Government employees from receiving salary or supplementation of salary as compensation for their Government service from any source other than the United States. The statutory provisions described in this section are intended to call each employee's attention to problem areas and are not intended as a comprehensive description or interpretation of statutory prohibitions or the exceptions thereto. Employees who need guidance concerning the scope and application of the conflict-of-interest laws and their exceptions should consult a deputy counselor.

§ 0.735-13 Clearance.

(a) Any employee who is engaged or is planning to engage in outside employment, business, professional, or other such activities has a positive obligation to inform himself fully concerning the requirements of this subpart and any laws, orders, regulations, or standards applicable to such activities. An employee shall request clearance from the head of his administration, bureau, or office as to whether such planned or current activities are prohibited:

(1) When such activities raise a substantial question of conflict with this subpart or any applicable laws, orders, regulations, or standards;

(2) When applicable laws, orders, regulations, or standards require clearance of such activities; or

(3) When the employee is specifically so required by the individual responsible for clearance in order to avoid possible conflict with applicable laws, orders, regulations, or standards.

The clearance request shall be in writing and shall include, at a minimum, the identity of the employee, a statement of the nature of the employment or activity, and the amount of time to be devoted to the employment or activity. The head of the employing administration, bureau, or office may require the employee to furnish such other information as may be appropriate in considering the clearance request. He may grant clearance only when he believes such activities would be consistent with applicable laws, orders, regulations, and standards. He shall consult fully with the Solicitor where appropriate. If clearance is not granted, the employee shall not commence or continue the outside employment or activity.

(b) The Secretary or his designee will handle requests for clearance by the heads of administrations, bureaus, offices, Presidential appointees, members of boards or commissions appointed by the Secretary, employees in the immediate Office of the Secretary. Clearance matters involving other employees in the Office of the Secretary will be handled by the head of the employing subdivision within such office which is not a part of a larger subdivision.

(c) The requirements set forth in this subpart are separate from and in addition to any provision under Subpart E of this part requiring an employee to submit a statement of employment and financial interests or any other requirements of that subpart.

Subpart D—Gifts, Fees, Entertainment, and Favors

§ 0.735-14 Acceptance of gratuities generally.

No employee shall solicit, accept, or agree to accept any direct or indirect favor, gift, loan, free service, gratuity, entertainment, or other item of economic value if the donor has or is seeking to obtain contractual or other business or financial relations with the Department, has interests that may be substantially affected by the performance or nonperformance of official duties, is attempting to reward or influence the employee's official actions, or if acceptance of such item could affect the employee's impartiality, or give that appearance. An employee shall not accept a gift, present, decoration, or other thing from a foreign Government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342. No regular Government employee may receive any salary or supplementation of salary from a private source as compensation for services to the Government.

§ 0.735-15 Payments, expenses, reimbursements, entertainment, etc., from nongovernment sources.

(a) In general, Decision B-128527 of the Comptroller General dated March 7, 1967, restricts receipt of reimbursement for travel, subsistence, or other expenses from private sources by an employee on official business under agency orders. This decision or other regulations in this part do not restrict acceptance of contributions, awards, travel, subsistence, and other expenses from nonprofit organizations authorized by 5 U.S.C. 4111 and regulations issued thereunder; *Provided*, That an employee may not, without the written permission of the head of his employing administration, bureau, or office, or other person responsible for clearance of outside activities under § 0.735-13 (except as allowed by § 0.735-17(a)(6)), accept from nongovernmental sources any payments, expenses, reimbursements, entertainment, or other item of economic value incident to training, attendance at meetings of any kind, or other activities, if such training, meetings, or activities are attended or performed wholly or partially within periods when he is on duty or at such times as the Department pays any expenses incident thereto in whole or in part. Such authorization may not be granted where prohibited by law or Decision B-128527 of the Comptroller General and may only be granted if acceptance of the contribution, award, or payment:

(1) Would not reflect unfavorably on the ability of the employee to carry out his official duties in a fair and objective manner;

(2) Would not compromise the honesty and integrity of the Government programs or of Government employees and their official actions or decisions;

(3) Would be compatible with the Code of Ethics for Government Service expressed in House Concurrent Resolution 175, 85th Congress, second session;

(4) Would otherwise be proper and ethical for the employee concerned under the circumstances in his particular case; and

(5) If the contribution, award, or payment is not a reward for services to the organization prior to the training or meeting. Authorization shall be limited to receipt of bona fide reimbursement for actual expenses of travel and other necessary subsistence for which no Government payment or reimbursement is made. However, an employee may not be reimbursed and payment may not be made on his behalf for excessive personal living expenses, gifts, entertainment, or other personal benefits.

§ 0.735-16 Contributions and gifts to superiors.

No employee may solicit contributions from another employee for a gift to an employee in a superior official position. An employee in a superior official position shall not accept a gift presented as a contribution from employees receiving less salary than himself. An employee shall not make a donation as a gift to an employee in a superior official position. This section does not prohibit voluntary gifts of nominal value or donations in a nominal amount made on a special occasion such as marriage, illness, etc.

§ 0.735-17 Permissible gifts.

(a) The prohibitions in this subpart do not preclude:

(1) Acceptance of unsolicited advertising or promotional material of nominal intrinsic value;

(2) Acceptance of an award for meritorious public contribution given by a charitable, religious, professional, social, fraternal, nonprofit educational, recreational, public service, or civic organization;

(3) Acceptance of gifts resulting from obvious family or personal relationships when the circumstances make clear that it is those relationships rather than the business of the persons concerned which are the motivating factor;

(4) Acceptance of loans from banks, or other financial institutions on customary terms to finance proper and usual activities;

(5) Acceptance of scholarships, fellowships, and similar forms of assistance which are incident to education or training pursued by an employee on his own time and his own initiative;

(6) Acceptance, without permission, of food, entertainment, and refreshments of nominal value on infrequent occasions in the ordinary course of a meeting, inspection tour, or training situation in which the employee is properly in attendance.

(b) Notwithstanding any reference to generally permissible gifts in this subpart, employees are expected to avoid any conflict or apparent conflict between their private interests and those of the Department and to observe the other standards of conduct set forth in Subpart B of this part.

Subpart E—Statements of Employment and Financial Interests

§ 0.735-18 Regular employees required to submit statements.

The following regular employees are required to submit to the head of the employing administration, bureau, or office statements of employment and financial interests on forms approved by the Solicitor and furnished to the employees. Such forms must be completed in accordance with instructions applicable thereto. Forms shall be submitted not later than 90 days after the effective date of the regulations in this part, if employed on or before that effective date or 30 days after his entrance on duty, but not earlier than 90 days after the effective date if appointed after the effective date.

(a) Employees paid at a level of the Executive Schedule in subchapter II of chapter 53 of title 5, United States Code; except the Secretary of Labor who is subject to separate reporting requirements under section 401 of Executive Order 11222;

(b) The Deputy Under Secretary, Deputy Assistant Secretaries, Deputy Solicitor, and all Assistants and all grades GS-13 and above executive or special assistants to the Secretary, Under Secretary, Assistant Secretaries, or the Solicitor;

(c) The heads of all administrations, bureaus, and offices, as defined in

§ 0.735-1. The heads of all bureaus and offices within an administration which are not a part of a larger administrative subdivision within such administration;

(d) The heads of all subdivisions within the Office of the Secretary which are not a part of a larger administrative subdivision within that Office;

(e) Employees in hearing examiner positions as defined by § 930.202(c) of the Civil Service Commission regulations (5 CFR 930.202(c));

(f) Employees, grade GS-13 and above occupying the following positions:

OFFICE OF THE SECRETARY

Immediate Office of the Secretary

Executive Secretary, Intra-Departmental Economic Advisory Committee.
Secretary's Regional Representative.

Office of the Assistant Secretary for Administration

Office of Financial Management and Administration:
  Director.
  Chief, Division of Audit.
  Auditors.
Office of Administrative Services:
  Director.
  Procurement Officer.
Office of Employee Utilization and Development:
  Director.
  Executive Development Officer.
  Employee Development Officer.
Office of Program and Budget Review:
  Director.
  Assistant Director for Budget Review.
  Assistant Director for Program Review.
Office of Federal Contract Compliance:
  Director.
  Assistant Director for Compliance Operations.
  Assistant Director for Program Policy.

Office of Information, Publications, and Reports

Deputy Director.

OFFICE OF THE SOLICITOR

Associate Solicitors.
Deputy Associate Solicitors.
Regional Attorneys.
Division of Litigation:
  Chief Trial Attorney.
  Counsel for Regional Litigation.
Division of Interpretations and Opinions:
  Counsel for Construction Wage Standards.
Division of Wage Determinations:
  Associate Administrator.
  Deputy Associate Administrator.

BUREAU OF LABOR STATISTICS

Deputy Commissioner.
Director, Office of Administrative Management.
Deputy Director, Office of Administrative Management.
Chief, Division of Fiscal Management and Services.

WAGE AND LABOR STANDARDS ADMINISTRATION

Office of the Wage and Labor Standards Administration

Deputy Administrator.
Director, Office of Planning.

Bureau of Labor Standards

Deputy Director.
Director, Office of Occupational Safety.
Regional Directors, Office of Occupational Safety.

Bureau of Employees' Compensation

Deputy Director.
Assistant Director for Administrative Management.
Assistant Director for Longshoremen's and Harbor Workers' Compensation.
Deputy Commissioners, District Offices.

BUREAU OF INTERNATIONAL LABOR AFFAIRS

Deputy Administrator.
Director, Division of Administration and Management.
Chief, Division of Trade Union Exchange Programs.
Division of International Exhibitions:
  Chief.
  Deputy Chief.
Division of Foreign Economic Policy:
  Chief.
  International Economists.

WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS

Deputy Administrator.
Assistant Administrator for Compliance and Enforcement.
Assistant Administrator for Research and Legislative Analysis.
Assistant Administrator for Planning and Management.
Assistant to the Administrator.
Chief, Division of Regulations and Exemptions.
Chief, Division of Wage Determinations.
Regional Directors.
Deputy Regional Directors.
Assistant Regional Directors.
Assistants to the Regional Directors.
Directors of District Offices.

Field Office Supervisors.
Director of the Puerto Rico Area Office.
Assistant Director of the Puerto Rico Area Office.

LABOR MANAGEMENT SERVICES ADMINISTRATION

Deputy Administrator.
Director, Office of Labor-Management Relations Services.
Director, Office of Labor-Management Policy Development.
Director, Office of Administration and Management.
Director, Office of Veterans Reemployment Rights.

Office of Labor-Management and Welfare-Pension Reports

Professionals, Office of the Director.
Professionals, Division of Compliance Operations.
Division of Reports and Analysis:
  Director.
  Deputy Director.
  Branch Chiefs.
  Supervisory Staff Accountants, Branch of Financial Analysis.
Director, Division of Technical Assistance.
Division of Regulations and Administrative Rulings:
  Director.
  Branch Chiefs.
  Chief, Section of Bonding.
  Chief, Section of Rulings (Welfare and Pension Plans).
Field:
  Regional Directors.
  Assistant Regional Directors.
  Area Directors.

MANPOWER ADMINISTRATION

Office of the Manpower Administrator

Deputy Manpower Administrator.
Assistant Manpower Administrator for Manpower Development and Training.
Assistant Manpower Administrator for Intergovernmental Relations.
Special Assistant to the Manpower Administrator (Equal Employment Opportunities).
Regional Manpower Administrators.
Manpower Administrator's Regional Representatives.
Executive Secretary, President's Committee on Manpower.
Associate Manpower Administrator.
Deputy Associate Manpower Administrator.
Office of Evaluation and Reports:
  Director.
  Chief, Division of Program Evaluation.
Office of Special Manpower Programs:
  Director.
  Division of Program Experimentation:
    Chief.
    Professionals.
  Division of Program Demonstration:
    Chief.
    Professionals.
Office of Manpower Research:
  Director.
  Special Assistant to the Director.
  Division of Manpower Research Contracts:
    Chief.
    All Professionals, grades GS-14 and above.
  Division of Manpower Research Grants:
    Chief.
    Professionals, grades GS-14 and above.

Office of Financial and Management Services

Assistant Manpower Administrator for Administration.
Deputy Assistant Manpower Administrator for Administration.
Division of Contracting Services:
  Chief.
  Chief, Branch of Payments Administration.
  Chief, Branch of MDTA Contracts and Grants.
  Chief, Branch of Bureau of Work Training Programs Contract Review.

Bureau of Apprenticeship and Training

Deputy Administrator.
Director, Office of Administration.
Regional Directors.
Deputy Regional Directors.

Bureau of Employment Security

Assistant to the Administrator.
Deputy Administrator.
Executive Assistant to the Administrator.
Special Assistant to the Administrator (Program Policy and Planning).
Special Assistant to the Administrator (Federal-State Relationships).
Special Assistant to the Administrator (Relations with Cooperating Groups).
Assistant to the Administrator for Training Program Coordination.
Chief, Office of Information.
Chief, Office of Field Administration.
Administration and Management Service:
  Director.
  Director, Office of Management and Appraisal.
  Chief, Division of Automatic Data Processing.
  Digital Computer Analysts.
  Chief, Division of Federal Management and Administration.
  Director, Office of Fiscal Policy and Management.
  Chief, Division of State Budgets and Fiscal Standards.

Unemployment Insurance Service:
  Director.
  Deputy Director.
  Assistant Director.
  Director, Office of Program Development and Legislation.
  Director, Office of Federal Unemployment Insurance Programs and Training Allowances.
Office of State Operations:
    Director.
    Assistant Director.
    Systems Development Staff.
    Chief, Division of Organization and Management.
U.S. Employment Service:
  Office of the Director:
    Director.
    Deputy Director.
    Special Assistants.
    Assistant for Program Planning and Development.
    Chief, Division of State Employment Service Administration.
    Chief, Branch of Program Budget Requirements.
    Employment Service Advisors (automatic data processing).
  Office of Employment Service Activities:
    Director.
    Chief, Division of Youth Employment and Guidance Services.
  Office of Manpower Analysis and Utilization:
    Director.
    Chief, Division of Research and Publications.
  Office of Manpower Training Operations:
    Director.
    Chief, Division of Training Program Development and Approval.
  Veterans Employment Service:
    Chief.
    Assistant Chief.
  U.S. Employment Service, D.C.:
    Director.
    Deputy Director.
    Assistant Directors.
  Office of Farm Labor Service:
    Director.
    Deputy Director.
    Chief, Division of Farm Labor Operations.
    Chief, Branch of Recruitment and Compliance.
    Chief, Division of Research and Wage Activities.
    Chief, Division of Labor Contractor Activities.
  Field Offices:
    Regional Administrators.
    Assistant Regional Administrators.

Bureau of Work Training Programs

Office of Planning and Evaluation:
  Director.
  Deputy Director.
  Program Evaluators.
Office of Operations:
  Director.
  Deputy Director.
Regional Offices:
  Directors.
  Deputy Directors.
  Field Representatives.
  Contract Specialists.

(g) Additions to, deletions from, and other amendments of the list of positions in paragraph (f) of this section may be made from time to time as necessary to carry out the purpose of the law, Executive Order 11222, and Part 735 of the Civil Service Commission regulations (5 CFR Part 735). Such amendments are effective upon clearance by the Solicitor and actual notification to the incumbents. The amended list shall be submitted annually for publication in the FEDERAL REGISTER.

(h) Any employee who believes that his position has been improperly included under this subpart as one requiring the submission of a statement of employment and financial interests shall have the opportunity for review of such inclusion under the grievance procedures of the Department of Labor.

§ 0.735–19 Supplementary statements, regular employees.

Changes in, or additions to the information contained in the regular employee's statement of employment and financial interests shall be reported in a supplementary statement as of September 30 each year. If there are no changes or additions, a negative report is required. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflict-of-interest laws or Subpart C of this part.

§ 0.735–20 Special government employees required to submit statements.

(a) Before an individual enters on duty as a special government employee expert or consultant he is required to submit a statement of employment and financial interests to the head of the employing administration, bureau, or office, on forms approved by the Solicitor and furnished to the individual. Such forms must be completed in accordance with the instructions applicable thereto. This requirement applies to all other special government employee positions unless the head of the employing administration, bureau, or office determines prior to appointment that the duties of the position are of such a nature and at such a level of responsibility that the submission of the statement is not necessary to protect the integrity of the government. For the purpose of this section, "consultant" and "expert" shall be given the meanings given those terms by Chapter 304 of the Federal Personnel Manual.

(b) Each special government employee shall keep his statement of employment and financial interests current throughout his employment with the Department by the submission of supplementary statements.

§ 0.735-21 Review procedures.

(a) Except as provided in 0.735-22, the head of each administration, bureau, or office, shall promptly review each initial and supplementary statement of employment and financial interests required by this part. No individual may enter on duty as a special government employee if the head of the employing administration, bureau, or office determines that employment would be in conflict with the standards set forth in this part, or other applicable regulations, laws, or orders.

(b) Before the head of an administration, bureau, or office disapproves a statement of employment and financial interests submitted by a regular or special government employee, such employee must be given an opportunity to explain the possible or apparent conflict of interest. The head of the employing administration, bureau, or office may require the employee to furnish such additional information as may be appropriate in considering the statement of employment and financial interests. If, after adequate investigation, he disapproves an employee's statement of employment and financial interests, he shall promptly notify the employee of the disapproval and recommend appropriate remedial action pursuant to § 0.735-3. If the employee is unwilling or unable to take such action, the head of the employing administration, bureau, or office shall forthwith transmit the employee's statement of employment and financial interests and other pertinent information to the Solicitor. The Solicitor shall review all such forms and recommend appropriate action on such statements of employment and financial interests to the Under Secretary. If the Under Secretary disapproves the form, the head of the employing administration, bureau, or office shall initiate appropriate remedial action under § 0.735-3 and other applicable laws, orders, and regulations. Pending any final determination with regard to an employee's statement of employment and financial interests, the head of the employing administration, bureau, or office shall relieve the employee of any duties which appear to conflict with a private interest or activity and assign him other duties.

§ 0.735-22 Statements of top staff and certain other employees.

Statements of employment and financial interests submitted by the heads of administrations, bureaus, offices, Presidential appointees, members of boards or commissions appointed by the Secretary, the heads of subdivisions within the Office of the Secretary which are not a part of larger administrative subdivisions within such Office, and employees in the immediate Office of the Secretary will be reviewed by the Secretary or the individual designated by him. Statements of employment and financial interests submitted by employees in the Office of the Secretary other than those specified above, will be reviewed by the head of the employing subdivision within such office which is not a part of a larger subdivision in accordance with § 0.735-21.

§ 0.735-23 Confidentiality.

The Department shall hold each statement of employment and financial interests and supplementary statements in confidence. Statements shall be kept in a special file maintained by the head of the administration, bureau, office or other official responsible for review in such administrative subdivision of the Department where the individual is employed. No statement or copy thereof may be placed in an employee's personnel file. The official responsible for review of a statement is also responsible for maintaining the statement in confidence and shall not allow an individual to examine any statement or copy thereof without the approval of the Solicitor for good cause shown, except in fulfillment of his responsibilities under the regulations in this part. No information from a statement of employment and financial interests may be disclosed outside of the Department of Labor except as the Secretary, or the Civil Service Commission may determine for good cause shown.

§ 0.735-24 Review of files.

The Solicitor or his designee may from time to time examine the files containing statements of employment and financial interests and supplementary statements, including those approved by the heads of administrations, bureaus, or offices. He shall report any conflict discovered thereby to the appropriate Department official.

§ 0.735-25 Interests of employees' relatives.

For the purpose of the statements of employment and financial interests required by this subpart, the interest of a spouse, minor child, or other member of the employee's immediate household is considered to be an interest of the employee. For the purpose of this section, "member of an employee's immediate household" means those blood relations who are residents of the employee's household.

§ 0.735-26 Information not known by employees.

If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf.

§ 0.735-27 Information not required.

This subpart does not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the policy holdings in an insurance company and the stock or bond holdings in a mutual fund, investment company, or bank: *Provided*, That in the case of a mutual fund, investment company, or bank, the fair value of such stock or bond holding does not exceed one percent of the value of the reported assets of the mutual fund, investment company, or bank. In addition, this subpart does not require submission of information relating to the employee's connection with, or interest in, a professional society or charitable, religious, social, fraternal, recreational, public service, civic, or political organization, or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

§ 0.735-28 Effect of employees' statements on other requirements.

The statement of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirements imposed by law, order, or regulations. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

APPENDIX A

Attention of the employees of the Department of Labor is hereby directed to the following statutory provisions:

(a) House Concurrent Resolution 175, 85th Congress, second session, 72A Stat, B12, the "Code of Ethics for Government Service."

(b) Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibition against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibition against political activities in subchapter III of chapter 73 of title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(q) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

Sec.
1.1 Purpose and scope.
1.2 Definitions.
1.3 Obtaining and compiling wage rate information.
1.4 Outline of agency construction programs.
1.5 Procedure for requesting wage determinations.
1.6 Determination of wage rates.
1.7 Use and effectiveness of wage determinations.
1.8 Scope of consideration (exclusive of wage rate determinations made pursuant to the Federal-Aid Highway Acts as codified in 23 U.S.C. 113, which shall be made in accordance with § 1.3(b)(4)).
1.9 Field survey.
1.10 Hearings.
1.11 Prehearing conferences.
1.12 Hearing examiner's proposed decision.
1.13 Submission of hearing examiner's proposed decision to interested persons.
1.14 Exceptions of interested persons.
1.15 Decision of Administrator.
1.16 Review by Wage Appeals Board.
1.17 Public information.
APPENDIX A
APPENDIX B

AUTHORITY: R.S. 161, 64 Stat. 1267; sec. 2, 48 Stat. 948; sec. 10, 61 Stat. 89; 5 U.S.C. 301, 5 U.S.C. App.; 40 U.S.C. 276c; 29 U.S.C. 258. Interpret or apply sec. 1, 46 Stat. 1494, 49 Stat. 1011; sec. 212 added to c. 847, 48 Stat. 1246 by sec. 14, 53 Stat. 807; sec. 602, added to c. 94, 64 Stat. 77 at 73 Stat. 681; sec. 2, 60 Stat. 1041; sec. 15, 60 Stat. 178; sec. 307(f), 63 Stat. 430; sec. 205, 64 Stat. 973; sec. 310, 65 Stat. 307; sec. 201, 64 Stat. 1248; sec. 3, 72 Stat. 532; sec. 108, 72 Stat. 895; sec. 6, 62 Stat. 1158; sec. 15, 75 Stat. 714; sec. 21, 75 Stat. 613; sec. 15, 75 Stat. 688; sec. 721, 77 Stat. 167; secs. 101, 122, 135, 205, 77 Stat. 282, 284, and 288; 40 U.S.C. 276a; 12 U.S.C. 1701q, 1715c, 1749a; 42 U.S.C. 291h, 1416, 1459, 1592; 29 U.S.C. 1114, 20 U.S.C. 636; 23 U.S.C. 113; 50 U.S.C. App. 2281; 33 U.S.C. 466e.

SOURCE: 37 FR 21138, Oct. 5, 1972, unless otherwise noted.

Note: At 47 FR 23651, May 28, 1982, Part 1 was revised effective July 27, 1982. At 47 FR 32070, July 26, 1982, the effective date of the revision was suspended indefinitely. Part 1 published at 37 FR 21138, Oct. 5, 1972, remains in effect. For the convenience of the user, the suspended text follows Part 1.

In order to determine the effective text at any date after the revision date of this volume (July 1, 1982), the user must consult the daily FEDERAL REGISTER.

§ 1.1 Purpose and scope.

(a) The procedural rules in this part apply under the Davis-Bacon Act (46 Stat. 1494, as amended; 40 U.S.C. 276a—276a-7) and other statutes listed in Appendix A to this part which provide for the payment of minimum wages, including fringe benefits, to laborers and mechanics engaged in construction activity under contracts entered into or financed by or with the assistance of agencies of the United States or the District of Columbia, based on determinations by the Secretary of Labor of the wage rates and fringe benefits prevailing for the corresponding classes of laborers and mechanics employed on projects similar to the contract work in the local areas where such work is to be performed. Functions of the Secretary of Labor under these statutes and under Reorganization Plan No. 14 of 1950 (64 Stat. 1267, 5 U.S.C. Appendix), except those assigned to the Wage Appeals Board (see 29 CFR Part 7), are assigned to the Assistant Secretary of Labor for Employment Standards and his delegees in the Employment Standards Administration of the U.S. Department of Labor.

(b) The regulations in this part set forth the procedures for making and applying such determinations of prevailing wage rates and fringe benefits pursuant to the Davis-Bacon Act, each of the other statutes listed in the Appendix A, any other Federal statute providing for determinations of such wages by the Secretary of Labor in accordance with the provisions of the Davis-Bacon Act, and such other statutes as may, from time to time, confer upon the Secretary of Labor similar wage determining authority.

(c) Procedures set forth in this part are applicable, unless otherwise indicated, both to general wage determination decisions published in the FEDERAL REGISTER for general use in specified localities for contracts to be performed there, and to project wage determination decisions for use on contract work to be performed on a specific project.

§ 1.2 Definitions.[1]

(a) The term "prevailing wage rate" for each classification of laborers and mechanics which the Administrator shall regard as prevailing in an area shall mean:

(1) The rate of wages paid in the area in which the work is to be performed, to the majority of those employed in that classification in construction in the area similar to the proposed undertaking;

(2) In the event that there is not a majority paid at the same rate, then the rate paid to the greater number: *Provided,* Such greater number constitutes 30 percent of those employed; or

(3) In the event that less than 30 percent of those so employed receive the same rate, then the average rate.

(b) The term "area" in determining wage rates under the Davis-Bacon Act and the prevailing wage provisions of the other statutes listed in Appendix A shall mean the city, town, village, or other civil subdivision of the State in which the work is to be performed. In determining wage rates pursuant to the Federal-Aid Highway Acts as codified in 23 U.S.C. 113, the College Housing Act of 1950, and the Federal Water Pollution Control Act, the term "area" shall mean immediate locality of the projects.

(c) The term "average rate" for each classification in an area shall mean the rate obtained by adding the hourly rates paid to all workers in the classification and dividing by the total number of such workers.

(d) The term "Administrator" shall mean the Deputy Assistant Secretary for Employment Standards, Employment Standards Administration, U.S. Department of Labor, who is also Administrator of the Wage and Hour Division, or his authorized representative as set forth in this part. In the absence of the Deputy Assistant Secretary/Wage Hour Administrator, the Deputy Administrator of the Wage and Hour Division/Director of Office of Wage and Compensation Programs is designated to act for him under this part. Except as otherwise provided in this part, the Assistant Administrator is the authorized representative of the Administrator for the performance of functions relating to the making and effectuation of wage determinations pursuant to the procedures provided herein. Each Regional Administrator, Employment Standards Administration, is the authorized representative of the Administrator for the performance of functions relating to wage determinations as provided in this part.

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[1] These definitions are not intended to restrict the meaning of the terms as used in the applicable statutes.

(e) The term "wages" (and its singular form) has the meaning prescribed in section 1(b) of the Davis-Bacon Act (40 U.S.C. 276a(b)). It includes "other bona fide fringe benefits" than those expressly enumerated in the Act. This permits, among other things, the inclusion of the "bona fide fringe benefits" in prevailing wage determinations under the Act for a particular area when the payment of such fringe benefits constitutes a prevailing practice. In finding whether or not it is the prevailing area practice to pay such fringe benefits, the Administrator shall be guided by the tests of prevalence similar to those prescribed in paragraph (a) of this section.

§ 1.3 Obtaining and compiling wage rate information.

For the purpose of making wage rate determinations, the Administrator shall conduct a continuing program for the obtaining and compiling of wage rate information.

(a) The Administrator shall encourage the voluntary submission of wage rate data to the appropriate Regional Office as shown in Appendix B by contractors, contractors' associations, labor organizations, public officials and other interested parties, reflecting wage rates paid to laborers and mechanics on various types of construction in the area. Rates must be determined, among others, for such varying types of projects as buildings, bridges, damns, highways, tunnels, sewers, power lines, railways, airports (building and runways), apartment houses, wharves, levees, canals, dredging, land clearing, and excavating. Accordingly, the information submitted should reflect not only that the specified wage rate or rates are paid to a particular craft in an area, but also the type or types of construction on which such rate or rates are paid.

(b) The following types of information will be considered in making wage rate determinations:

(1) Statements showing wage rates paid on projects. (Such statements should indicate the names and addresses of contractors, including subcontractors, the locations, approximate costs, dates of construction and types of projects, the number of workers employed in each classification on each project, and the respective wage rates paid such workers.)

(2) Signed collective bargaining agreements. (The Administrator may request the parties to an agreement to submit statements certifying to its scope and application.)

(3) Wage rates determined for public construction by State and local officials pursuant to prevailing wage legislation.

(4) Information furnished by Federal and State agencies. See § 1.5. (In making wage rate determinations pursuant to Federal-Aid Highway Acts as codified in 23 U.S.C. 113, the highway department of the State in which a project in the Interstate System is to be performed shall be consulted. Before making a determination of wage rates for such a project the Administrator shall give due regard to the information thus obtained.)

(5) Any other information pertinent to the determination of prevailing wage rates.

(c) The Administrator shall supplement such information obtained on a voluntary basis by such means, including the holding of hearings, and from whatever sources he deems necessary.

§ 1.4 Outline of agency construction programs.

To the extent practicable, at the beginning of each fiscal year each agency using wage determinations under any of the various statutes listed in Appendix A shall furnish each Employment Standards Administration Regional Office with a general outline of its proposed construction programs for the coming year in the area covered by that regional office indicating the estimated number of projects for which wage determinations will be required, the anticipated types of construction, and the locations of construction. During the fiscal year, each agency shall notify the Regional Administrator of any significant changes in its proposed construction programs, as outlined at the beginning of the fiscal year.

§ 1.5 Procedure for requesting wage determinations.

(a)(1) The Federal agency shall initially request a wage determination under the Davis-Bacon Act or any of its related prevailing wage statutes by submitting Standard Form 308 to the Department of Labor at this address:

U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Divison of Construction Wage Determinations, Washington, D.C. 20210.

State highway departments under the Federal-Aid Highway Act as codified in 23 U.S.C. 113 and State and local governments requiring wage determinations pursuant to the State and Local Fiscal Assistance Act of 1972 (Title I, Pub. L. 92-512) shall similarly request a wage determination by using Standard Form 308.

The agency shall check only those classifications on the applicable form which will be needed in the performance of the work (inserting a note such as "entire schedule" or "all applicable classifications" is not sufficient). Additional classifications needed which are not on the form may be typed in the blank spaces or on a separate list and attached to the form. The agency shall not list classifications which can be fitted into classifications on the form, or classifications which are not generally recognized in the area or in the construction industry.

(2) In completing SF-308, the agency shall furnish:

(i) A sufficiently detailed description of the work to indicate the type of construction involved. Additional description or separate attachment, if necessary for identification of type of project, shall be furnished.

(ii) Location of the proposed project (include distance in miles and direction from the nearest point of reference).

(3) Such request for a wage determination shall be accompanied by any pertinent wage payment information which may be available. This information need not accompany a request in areas where the wage patterns are clearly established. When the requesting agency is a State highway department under the Federal-Aid Highway Acts as codified in 23 U.S.C. 113, such agency shall also include its recommendations as to the wages which are prevailing for each classification of laborers and mechanics on similar construction in the immediate locality.

(b) Whenever the wage patterns in a particular area for a particular type of construction are well settled and whenever it may be reasonably anticipated that there will be a large volume of procurement in that area for such a type of construction, the Administrator, upon the request of a Federal agency or in his discretion, may issue a general wage determination when, after consideration of the facts and circumstances involved, he finds that the applicable statutory standards and those of this part will be met.

(c) The time required for processing requests for wage determinations varies according to the facts and circumstances in each case. An agency should anticipate that such processing in the Department of Labor will take at least 30 days.

[37 FR 21138, Oct. 5, 1972, as amended at 43 FR 1943, Jan. 13, 1978]

§ 1.6 Determination of wage rates.

In the event that the data compiled under § 1.3 are sufficient to determine the prevailing wage rates, a wage determination decision shall be made as to the wage rates and fringe benefits prevailing in the area in response to requests submitted as provided in § 1.5. If a general wage determination decision is issued as provided in § 1.5(b), it shall be published in the FEDERAL REGISTER. Copies of project wage determinations shall be delivered to the requesting contracting officers through the Regional Offices which originally received the requests. Such wage determination decisions shall be used, and may be modified, superseded, or corrected as provided in § 1.7.

§ 1.7 Use and effectiveness of wage determinations.

(a)(1) Project wage determinations initially issued shall be effective for 120 calendar days from the date of such determinations. If such a wage determination is not used in the period of its effectiveness it is void. If it appears that a wage determination may expire between bid opening and award, the agency should request a new wage determination sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before award and after bid opening, the Administrator upon a written finding to that effect by the head of the Federal agency in individual cases may extend the expiration date of a determination whenever he finds it necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business.

(2) General wage determinations issued pursuant to § 1.5(b) and which are published in the FEDERAL REGISTER, shall contain no expiration date. These general wage determinations shall be modified, and the modifications published in the FEDERAL REGISTER, on a timely basis to keep them current.

(b)(1) All actions modifying an original project wage determination prior to the award of the contract or contracts for which the determination was sought shall be applicable thereto, but modifications received by the Federal agency (in the case of the Federal-Aid Highway Acts as codified in 23 U.S.C. 113, the State highway department of each State) later than 10 days before the opening of bids shall not be effective except when the Federal agency (in the case of the Federal-Aid Highway Acts as codified in 23 U.S.C. 113, the State highway department of each State) finds that there is a reasonable time in which to notify bidders of the modification. Similarly, in the case of contracts entered into pursuant to the National Housing Act, changes or modifications in the original determination shall be effective if made prior to the beginning of construction, but shall not apply after the mortgage is initially endorsed by the Federal agency. A modification in no case will continue in effect beyond the effective period of the wage determination to which it relates.

(2) All actions modifying a general wage determination shall be applicable thereto, but modifications published in the FEDERAL REGISTER later than 10 days before the opening of bids shall not be effective, except when the Federal agency (in the case of Federal-Aid Highway Acts as codified in 23 U.S.C. 113, the State highway department of each State) finds that there is a reasonable time in which to notify bidders of the modification. In the case of contracts entered into pursuant to the National Housing Act, such modifications shall be effective if made prior to the beginning of construction, but shall not apply after the mortgage is initially endorsed by the Federal agency.

(c) Upon his own initiative or the request of a Federal agency (or a State highway department under the Federal-Aid Highway Acts as codified in 23 U.S.C. 113), the Administrator shall correct any wage determination included in a contract subject to the minimum wage provisions of the statutes listed in Appendix A of this part whenever he finds such a wage determination contains clerical errors.

[37 FR 21138, Oct. 5, 1972, as amended at 37 FR 25929, Dec. 6, 1972]

§ 1.8 Scope of consideration (exclusive of wage rate determinations made pursuant to the Federal-Aid Highway Acts as codified in 23 U.S.C. 113, which shall be made in accordance with § 1.3(b)(4)).

(a) In making a wage rate determination, projects completed more than 1 year prior to the date of request for the determination may, but need not be considered.

(b) If there has been no similar construction within the area in the past year, wage rates paid on the nearest similar construction may be considered.

§ 1.9 Field survey.

Whenever the data at hand are insufficient to make a determination with respect to all the crafts necessary to perform the proposed construction work, a field survey may be conducted in the area of the proposed project for the purpose of obtaining sufficient information upon which to make a determination of wage rates.

§ 1.10 Hearings.

Whenever he deems it necessary because of insufficiency of information or impracticality of a field survey, or both, the Administrator may direct a hearing to be held. He shall request the Chief Hearing Examiner, U.S. Department of Labor, to designate a hearing examiner who shall, after notice to all interested persons, proceed to the project area and make such investigations and conduct such hearings as may be necessary to make a determination of wage rates for the project.

§ 1.11 Prehearing conferences.

When it appears that a prehearing conference will expedite proceedings, the examiner prior to the hearing may request interested persons to attend a conference to consider such matters as may expedite the hearing.

§ 1.12 Hearing examiner's proposed decision.

The hearing examiner shall make a written proposed decision in which he shall:

(a) State the procedure that he has followed;

(b) Summarize briefly the evidence and information that he has received;

(c) Analyze the evidence and information; and

(d) Draft a proposed decision for the Administrator's consideration.

§ 1.13 Submission of hearing examiner's proposed decision to interested persons.

A copy of the hearing examiner's proposed decision shall be mailed to each interested person appearing at the hearing.

§ 1.14 Exceptions of interested persons.

Any interested person may within 5 days after receipt of the hearing examiner's proposed decision file his exceptions thereto. Such exceptions shall be filed with the Chief Hearing Examiner, U.S. Department of Labor, Washington 25, D.C., for transmission to the Administrator.

§ 1.15 Decision of Administrator.

The Administrator shall rule upon any exceptions filed under § 1.14, and shall make a determination as to the prevailing wage rates for the project.

§ 1.16 Review by Wage Appeals Board.

Any interested person may appeal to the Wage Appeals Board for a review of a determination of wage rates made under this part, or any findings and conclusions made on the record of any hearings held under § 1.3(c). Any such appeal may, in the discretion of the Wage Appeals Board, be received, accepted, and decided in accordance with the provisions of 29 CFR Part 7 and such other procedures as the Board may establish.

§ 1.17 Public information.

Papers and documents containing information furnishing the basis for any determination of wage rates shall be available for public inspection at each Regional Office, Employment Standards Administration, within the geographical area comprising the region, and in the Washington Office under the procedures prescribed in Part 70 of this subtitle. The application of these procedures shall insure that disclosure of the relevant information will be made in a manner consistent with Part 70, governing the disclosure of particular or specific records which are in the custody of the Employment Standards Administration. See Appendix B for address of each Regional Office and the geographical areas comprising each region.

APPENDIX A

STATUTES RELATED TO THE DAVIS-BACON ACT REQUIRING PAYMENT OF WAGES AT RATES PREDETERMINED BY THE SECRETARY OF LABOR

1. The Davis-Bacon Act (secs. 1-7, 46 Stat. 1494, as amended; Pub. L. 74-403, 40 U.S.C. 276a-276a-7).

2. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).

3. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).

4. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86-372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).

5. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).

6. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).

7. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).

8. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).

9. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91-230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92-318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.

10. The Federal-Aid Highway Act of 1956 (sec. 108(b), 70 Stat. 378, recodified at 72 Stat. 895; 23 U.S.C. 113(a), as amended), see particularly the amendments in the Federal-Aid Highway Act of 1968 (Pub. L. 90-495, 62 Stat. 815).

11. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).

12. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).

13. Rehabilitation Act of 1973 (sec. 306(b)(5), 87 Stat. 384, 29 U.S.C. 776(b)(5)).

14. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 88 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).

15. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).

16. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).

17. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

18. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).

19. National Visitors Center Facilities Act of 1968 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).

20. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).

21. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2) thereof, 88 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

22. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

23. Health Professions Education Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2256, 42 U.S.C. 293a(c)(7)).

24. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 364; 42 U.S.C. 296a(b)(5)).

25. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

26. Safe Drinking Water Act (sec. 2(a), see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j-9(e)).

27. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o-3(b)(1)(H)).

28. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

29. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

30. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

31. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

32. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c-3).

33. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

34. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

35. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

36. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

37. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

38. Older Americans Act of 1965 (sec. 502, Pub. L. 89-73, as amended by sec. 501, Pub. L. 93-29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

39. Public Works and Economic Development Act of 1965 (sec. 712, 79 Stat. 575 as amended; 42 U.S.C. 3222).

40. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

41. New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).

42. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

43. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

44. Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

45. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

46. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

47. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

48. Solid Waste Disposal Act (sec. 2, 90 Stat. 2828; 42 U.S.C. 6979).

49. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

50. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

51. Highway speed ground transportation study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

52. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

53. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281i).

54. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 644; 40 U.S.C. 682(b)(4).

NOTE: Repealed Dec. 9, 1969 and labor standards incorporated in sec. 1-1431 of the District of Columbia Code).

55. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89-694, but not in the United States Code).

56. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87-328) (considered a statute for purposes of the plan but not in the United States Code)

[43 FR 32130, July 25, 1978]

APPENDIX B

BOSTON REGION

For the States of Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, and Connecticut:

Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 1612C, John F. Kennedy Federal Building, Government Center, Boston, Mass. 02203 (telephone: 617-223-2035).

NEW YORK REGION

For the States of New York and New Jersey and for Puerto Rico and the Virgin Islands:

Regional Administrator, Employment Standards Administration, U.S. Department of Labor, 1515 Broadway, New York, NY 10036 (telephone: 212-971-5451).

PHILADELPHIA REGION

For the States of Pennsylvania, Maryland, Delaware, Virginia, West Virginia, and the District of Columbia:

Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 704C, 1317 Filbert Street, Philadelphia, PA 19107 (telephone: 215-597-9633).

ATLANTA REGION

For the States of Florida, Georgia, North Carolina, South Carolina, Tennessee, Alabama, Kentucky, and Mississippi:

Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 331, 1371 Peachtree Street NE., Atlanta, GA 30309 (telephone: 404-526-5801).

CHICAGO REGION

For the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin:

Regional Administrator, Employment Standards Administration, U.S. Department of Labor U.S. Courthouse and Federal Office Building, Room 742, 219 South Dearborn Street, Chicago, IL 60604 (telephone: 312-353-7280).

DALLAS REGION

For the States of Texas, New Mexico, Oklahoma, Arkansas, and Louisiana:

Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 13F12, 1100 Commerce Street, Dallas, TX 75202 (telephone: 214-749-2037).

KANSAS CITY REGION

For the States of Missouri, Kansas, Nebraska, and Iowa:

Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 2000, Federal Office Building, 911 Walnut Street, Kansas City, MO 64102 (telephone: 816-374-5384).

DENVER REGION

For the States of Colorado, North Dakota, South Dakota, Utah, Wyoming, and Montana:

Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 246, 232 New Customshouse, 721 19th Street, Denver, CO 80202 (telephone: 303-837-4613).

SAN FRANCISCO REGION

For the States of California, Nevada, Arizona, and Hawaii, and for Guam, and various Pacific Islands:

Regional Administrator, Employment Standards Administration, U.S. Department of Labor, 450 Golden Gate Avenue, Room 10431, San Francisco, CA 94102 (telephone: 415-556-1318).

SEATTLE REGION

For the States of Washington, Oregon, Idaho, and Alaska:

Regional Administrator, Employment Standards Administration, U.S. Department of Labor, 2008 Smith Tower, 506 Second Avenue, Seattle, WA 98104 (telephone: 206-442-1536).

Postponed Regulation: At 47 23651, May 28, 1982, Part 1 was revised effective July 27, 1982. At 47 FR 32070, July 26, 1982, the effective date of the revision was suspended indefintely. The prior text of Part 1, published at 37 FR 21138, Oct. 5, 1972, remains in effect. For the convenience of the user, the suspended text appears below.

In order to determine the effective text at any date after the revision date of this volume (July 1, 1982), the user must consult the daily FEDERAL REGISTER.

PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

Sec.
1.1 Purpose and scope.
1.2 Definitions.
1.3 Obtaining and compiling wage rate information.
1.4 Outline of agency construction programs.
1.5 Procedure for requesting wage determinations.
1.6 Use and effectiveness of wage determinations.
1.7 Scope of consideration.
1.8 Reconsideration by the Administrator.
1.9 Review by Wage Appeals Board.
APPENDIX A
APPENDIX B

AUTHORITY: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 29 U.S.C. 259; 40 U.S.C. 276a—276a-7; 40 U.S.C. 276c; and the laws listed in Appendix A of this Part.

SOURCE: 47 FR 23651, May 28, 1982, unless otherwise noted.

§ 1.1 Purpose and scope.

(a) The procedural rules in this part apply under the Davis-Bacon Act (946 Stat. 1494, as amended; 40 U.S.C. 276a—276a-7) and other statutes listed in Appendix A to this part which provide for the payment of minimum wages, including fringe benefits, to laborers and mechanics engaged in construction activity under contracts entered into or financed by or with the assistance of agencies of the United States or the District of Columbia, based on determinations by the Secretary of Labor of the wage rates and fringe benefits prevailing for the corresponding classes of laborers and mechanics employed on projects similar to the contract work in the local areas where such work is to be performed. Functions of the Secretary of Labor under these statutes and under Reorganization Plan No. 14 of 1950 (64 Stat. 1267, 5 U.S.C. Appendix), except those assigned to the Wage Appeals Board (see 29 CFR Part 7), have been delegated to the Assistant Secretary of Labor for Employment Standards who in turn has delegated the functions to the Administrator of the Wage and Hour Division, and authorized representatives.

(b) The regulations in this part set forth the procedures for making and applying such determinations of prevailing wage rates and fringe benefits pursuant to the Davis-Bacon Act, each of the other statutes listed in Appendix A, and any other Federal statute providing for determinations of such wages by the Secretary of Labor in accordance with the provisions of the Davis-Bacon Act.

(c) Procedures set forth in this part are applicable, unless otherwise indicated, both to general wage determinations published in the FEDERAL REGISTER for contracts in specified localities, and to project wage determinations for use on contract work to be performed on a specific project.

§ 1.2 Definitions.[1]

(a)(1) The "prevailing wage" shall be the wage paid to the majority (more than 50 percent) of the laborers or mechanics in the classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the "prevailing wage" shall be the average of the wages paid, weighted by the total employed in the classification.

(2) In determining the "prevailing wages" at the time of issuance of a wage determination, the Administrator will be guided by paragraph (a)(1) of this section and will consider the types of information listed in § 1.3 of this part.

(b) The term "area" in determining wage rates under the Davis-Bacon Act and the prevailing wage provisions of the other stat-

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[1] These definitions are not intended to restrict the meaning of the terms as used in the applicable statutes.

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utes listed in Appendix A shall mean the city, town, village, county or other civil subdivision of the State in which the work is to be performed.

(c) The term "Administrator" shall mean the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative. In the absence of the Wage-Hour Administrator, the Deputy Administrator of the Wage and Hour Division is designated to act for the Administrator under this part. Except as otherwise provided in this part, the Assistant Administrator for Government Contract Wage Standards is the authorized representative of the Administrator for the performance of functions relating to the making of wage determinations.

(d) The term "agency" shall mean the Federal agency, State highway department under 23 U.S.C. 113, or recipient State or local government under Title 1 of the State and Local Fiscal Assistance Act of 1972.

§ 1.3 Obtaining and compiling wage rate information.

For the purpose of making wage determinations, the Administrator will conduct a continuing program for the obtaining and compiling of wage rate information.

(a) The Administrator will encourage the voluntary submission of wage rate data by contractors, contractors' associations, labor organizations, public officials and other interested parties, reflecting wage rates paid to laborers and mechanics on various types of construction in the area. The Administrator may also obtain data from agencies on wage rates paid on construction projects under their jurisdiction. The information submitted should reflect not only the wage rates paid a particular classification in an area, but also the type or types of construction on which such rate or rates are paid, and whether or not such rates were paid on Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements.

(b) The following types of information may be considered in making wage rate determinations:

(1) Statements showing wage rates paid on projects. Such statements should include the names and addresses of contractors, including subcontractors, the locations, approximate costs, dates of construction and types of projects, whether or not the projects are Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements, the number of workers employed in each classification on each project, and the respective wage rates paid such workers.

(2) Signed collective bargaining agreements. The Administrator may request the parties to an agreement to submit statements certifying to its scope and application.

(3) Wage rates determined for public construction by State and local officials pursuant to State and local prevailing wage legislation.

(4) In making wage rate determinations pursuant to 23 U.S.C. 113, the highway department of the State in which a project in the Federal-Aid highway system is to be performed shall be consulted. Before making a determination of wage rates for such a project the Administrator shall give due regard to the information thus obtained.

(5) Wage rate data submitted to the Department of Labor by contracting agencies pursuant to 29 CFR 5.5(a)(1)(ii).

(6) Any other information pertinent to the determination of prevailing wage rates.

(c) The Administrator may initially obtain or supplement such information obtained on a voluntary basis by such means, including the holding of hearings, and from any sources determined to be necessary. All information of the types described in § 1.3(b) of this part, pertinent to the determination of the wages prevailing at the time of issuance of the wage determination, will be evaluated in the light of § 1.2(a) of this part.

(d) In compiling wage rate data for building and residential wage determinations, the Administrator will not use data from Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements unless it is determined that there is insufficient wage data to determine the prevailing wages in the absence of such data. Data from Federal or federally assisted projects will be used in compiling wage rate data for heavy and highway wage determinations.

§ 1.4 Outline of agency construction programs.

To the extent practicable, at the beginning of each fiscal year each agency using wage determinations under any of the various statutes listed in Appendix A will furnish the Administrator with a general outline of its proposed construction programs for the coming year indicating the estimated number of projects for which wage determinations will be required, the anticipated types of construction, and the locations of construction. During the fiscal year, each agency will notify the Administrator of any significant changes in its proposed construction programs, as outlined at the beginning of the fiscal year. This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 1671-DOL-AN.

§ 1.5 Procedure for requesting wage determinations.

(a)(1) Except as provided in paragraph (b) of this section, the Federal agency shall ini-

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tially request a wage determination under the Davis-Bacon Act or any of its related prevailing wage statutes by submitting Standard Form 308 to the Department of Labor at this address:

U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Branch of Construction Wage Determinations, Washington, D.C. 20210.

The agency shall check only those classifications on the applicable form which will be needed in the performance of the work. Inserting a note such as "entire schedule" or "all applicable classifications" is not sufficient. Additional classifications needed which are not on the form may be typed in the blank spaces or on a separate list and attached to the form.

(2) In completing SF-308, the agency shall furnish:

(i) A sufficiently detailed description of the work to indicate the type of construction involved. Additional description or separate attachment, if necessary for identification of type of project, shall be furnished.

(ii) The county (or other civil subdivision) and State in which the proposed project is located.

(3) Such request for a wage determination shall be accompanied by any pertinent wage payment information which may be available. When the requesting agency is a State highway department under the Federal-Aid Highway Acts as codified in 23 U.S.C. 113, such agency shall also include its recommendations as to the wages which are prevailing for each classification of laborers and mechanics on similar construction in the area.

(b) Whenever the wage patterns in a particular area for a particular type of construction are well settled and whenever it may be reasonably anticipated that there will be a large volume of procurement in that area for such a type of construction, the Administrator, upon the request of a Federal agency or in his/her discretion, may publish a general wage determination in the FEDERAL REGISTER when, after consideration of the facts and circumstances involved, the Administrator finds that the applicable statutory standards and those of this part will be met. If there is a general wage determination applicable to the project, the agency may use it without notifying the Department of Labor, *Provided*, that questions concerning its use shall be referred to the Department of Labor in accordance with § 1.6(b).

(c) The time required for processing requests for wage determinations varies according to the facts and circumstances in each case. An agency should anticipate that such processing in the Department of Labor will take at least 30 days.

§ 1.6 Use of effectiveness of wage determinations.

(a)(1) Project wage determinations initially issued shall be effective for 180 calendar days from the date of such determinations. If such a wage determination is not used in the period of its effectiveness it is void. Accordingly, if it appears that a wage determination may expire between bid opening and contract award (or between initial endorsement under the National Housing Act or the execution of an agreement to enter into a housing assistance payments contract under section 8 of the U.S. Housing Act of 1937, and the start of construction) the agency shall request a new wage determination sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before award but after bid opening (or before the start of construction, but after initial endorsement under the National Housing Act, or before the start of construction but after the execution of an agreement to enter into a housing assistance payments contract under Section 8 of the U.S. Housing Act of 1937), the head of the agency or his or her designee may request the Administrator to extend the expiration date of the wage determination in the bid specifications instead of issuing a new wage determination. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension of the expiration date of the determination is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all of the circumstances, including an examination to determine if the previously issued rates remain prevailing. If the request for extension is denied, the Administrator will proceed to issue a new wage determination for the project.

(2) General wage determinations issued pursuant to § 1.5(b) and which are published in the FEDERAL REGISTER, shall contain no expiration date.

(b) Contracting agencies are responsible for insuring that only the appropriate wage determination(s) are incorporated in bid solicitations and contract specifications and for designating specifically the work to which such wage determinations will apply. Any question regarding application of wage rate schedules shall be referred to the Administrator, who shall give foremost consideration to area practice in resolving the question.

(c)(1) Project and general wage determinations may be modified from time to time to keep them current. A modification may

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specify only the items being changed, or may be in the form of a supersedeas wage determination, which replaces the entire wage determination. Such actions are distinguished from a determination by the Administrator under paragraphs (d), (e) and (f) of this section that an erroneous wage determination has been issued or that the wrong wage determination or wage rate schedule has been utilized by the agency.

(2)(i) All actions modifying a project wage determination received by the agency before contract award (or the start of construction where there is no contract award) shall be effective except as follows:

(A) In the case of contracts entered into pursuant to competitive bidding procedures, modifications received by the agency less than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available before bid opening, to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if the modification is received after bid opening.

(B) In the case of projects assisted under the National Housing Act, modifications shall be effective if received prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(C) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, modifications shall be effective if received prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is executed, whichever occurs first.

(ii) Modifications to project wage determinations and supersedeas wage determinations shall not be effective after contract award (or after the beginning of construction where there is no contract award).

(iii) Actual written notice of a modification shall constitute receipt.

(3) All actions modifying a general wage determination shall be effective with respect to any project to which the determination applies, if published before contract award (or the start of construction where there is no contract award), except as follows:

(i) In the case of contracts entered into pursuant to competitive bidding procedures, modifications published less than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available before bid opening to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if the modification is published after bid opening.

(ii) In the case of projects assisted under the National Housing Act, modifications shall be effective if published prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(iii) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, modifications shall be effective if published prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is signed, whichever occurs first.

(iv) If under paragraph (c)(3)(i) of this section the contract has not been awarded within 90 days after bid opening, or if under paragraph (c)(3) (ii) or (iii) of this section construction has not begun within 90 days after initial endorsement or the signing of the agreement to enter into a housing assistance payments contract, any modifications published in the FEDERAL REGISTER prior to award of the contract or the beginning of construction, as appropriate, shall be effective with respect to that contract unless the head of the agency or his or her designee requests and obtains an extension of the 90-day period from the Administrator. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all the circumstances.

(v) A modification to a general wage determination is "published" within the meaning of this section on the date of publication in the FEDERAL REGISTER, or on the date the agency receives actual written notice of the modification from the Department of Labor, whichever occurs first.

(vi) Modifications or supersedeas wage determinations to an applicable general wage determination published after contract award (or after the beginning of construction where there is no contract award) shall not be effective.

(d) Upon his/her own initiative or at the request of an agency, the Administrator may correct any wage determination, without regard to paragraph (c) of this section, whenever the Administrator finds such a wage determination contains clerical errors. Such corrections shall be included in any bid specifications containing the wage determination, or in any on-going contract containing the wage determination in question, retroactively to the start of construction.

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(e) Written notification by the Department of Labor prior to the award of a contract (or the start of construction under the National Housing Act, under section 8 of the U.S. Housing Act of 1937, or where there is no contract award) that (1) there is included in the bidding documents or solicitation the wrong wage determination or the wrong schedule or that (2) a wage determination is withdrawn by the Department of Labor as a result of a decision by the Wage Appeals Board, shall be effective immediately without regard to paragraph (c) of this section.

(f) The Administrator may issue a wage determination after contract award or after the beginning of construction if the agency has failed to incorporate a wage determination in a contract required to contain prevailing wage rates determined in accordance with the Davis-Bacon Act, or has used a wage determination which by its terms or the provisions of this part clearly does not apply to the contract. Further, the Administrator may issue a wage determination which shall be applicable to a contract after contract award or after the beginning of construction when it is found that the wrong wage determination has been incorporated in the contract because of an inaccurate description of the project or its location in the agency's request for the wage determination. Under any of the above circumstances, the agency shall either terminate and resolicit the contract with the valid wage determination, or incorporate the valid wage determination retroactive to the beginning of construction through supplemental agreement or through change order, *Provided* that the contractor is compensated for any increases in wages resulting from such change. The method of incorporation of the valid wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable procurement law.

(g) If Federal funding or assistance under a statute requiring payment of wages determined in accordance with the Davis-Bacon Act is not approved prior to contract award (or the beginning of construction where there is no contract award), the agency shall request a wage determination prior to approval of such funds. Such a wage determination shall be issued based upon the wages and fringe benefits found to be prevailing on the date of award or the beginning of construction (under the National Housing Act, under section 8 of the U.S. Housing Act of 1937 or where there is no contract award), as appropriate, and shall be incorporated in the contract specifications retroactively to that date, *provided*, that upon the request of the head of the agency in individual cases the Administrator may issue such a wage determination to be effective on the date of approval of Federal funds or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent injustice or undue hardship, *Provided further* that the Administrator finds no evidence of intent to apply for Federal funding or assistance prior to contract award or the start of construction, as appropriate.

§ 1.7 Scope of consideration.

(a) In making a wage determination, the "area" will normally be the county unless sufficient current wage data (data on wages paid on current projects or, where necessary, projects under construction no more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate) is unavailable to make a wage determination.

(b) If there has not been sufficient similar construction within the area in the past year to make a wage determination. Wages paid on similar construction in surrounding counties may be considered, *Provided* that projects in metropolitan counties may not be used as a source of data for a wage determination in a rural county, and projects in rural counties may not be used as a source of data for a wage determination for a metropolitan county.

(c) If there has not been sufficient similar construction in surrounding counties or in the State in the past year, wages paid on projects completed more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate, may be considered.

(d) Classifications and wage rates will be issued for identifiable "classes of laborers and mechanics." Semi-skilled classifications of helpers will be issued when the classifications are identifiable in the area. The use of helpers, apprentices and trainees is permitted in accordance with Part 5 of this subtitle.

§ 1.8 Reconsideration by the Administrator.

Any interested person may seek reconsideration of a wage determination issued under this part or of a decision of the Administrator regarding application of a wage determination. Such a request for reconsideration shall be in writing accompanied by a full statement of the interested person's views and any supporting wage data or other pertinent information. The Administrator will respond within 30 days of receipt thereof, or will notify the requestor within the 30 day period that additional time is necessary.

§ 1.9 Review by Wage Appeals Board.

Any interested person may appeal to the Wage Appeals Board for a review of a wage determination or its application made under this part, after reconsideration by the Ad-

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ministrator has been sought pursuant to § 1.8 and denied. Any such appeal may, in the discretion of the Wage Appeals Board, be received, accepted, and decided in accordance with the provisions of 29 CFR Part 7 and such other procedures as the Board may establish.

APPENDIX A

STATUTES RELATED TO THE DAVIS-BACON ACT REQUIRING PAYMENT OF WAGES AT RATES PREDETERMINED BY THE SECRETARY OF LABOR

1. The Davis-Bacon Act (secs. 1-7, 46 Stat. 1494, as amended; Pub. L. 74-403, 40 U.S.C. 276a-276a-7).

2. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).

3. Housing Act of 1950 (college Housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).

4. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86-372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).

5. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).

6. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).

7. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).

8. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).

9. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91-230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92-318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.

10. The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821; 23 U.S.C. 113).

11. Indians Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).

12. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).

13. Rehabilitation Act of 1973 (sec. 306(b)(5), 87 Stat. 384, 29 U.S.C. 776(b)(5)).

14. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 83 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).

15. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).

16. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).

17. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

18. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).

19. National Visitors Center Facilities Act of 1968 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).

20. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).

21. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 306(h)(2) thereof, 83 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

22. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

23. Health Professions Education Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2256; 42 U.S.C. 293a(c)(7)).

24. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 364; 42 U.S.C. 296a(b)(5)).

25. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

26. Safe Drinking Water Act (sec. 2(a), see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j-9(e)).

27. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o-3(b)(1)(H)).

28. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

29. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

30. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

31. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

32. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c-3).

33. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

34. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

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35. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

36. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

37. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

38. Older Americans Act of 1965 (sec. 502, Pub. L. 89-73, as amended by sec. 501, Pub. L. 93-29; 87 Stat. 59; 42 U.S.C. 3041a(a)(4)).

39. Public Works and Economic Development Act of 1965 (sec. 712, 79 Stat. 575 as amended; 42 U.S.C. 3222).

40. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

41. New Communities Act of 1968 (sec. 410.82 Stat. 516; 42 U.S.C. 3909).

42. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

43. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

44. Housing and Community Development Act of 1974 (secs. 110, 802(g), 83 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

45. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

46. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).

47. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

48. Energy Conservation and Production Act (sec. 45(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

49. Solid Waste Disposal Act (sec. 2, 90 Stat. 2828; 42 U.S.C. 6979).

50. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

51. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

52. Highway speed ground transportation study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

53. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

54. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281(i)).

55. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat; 40 U.S.C. 682(b)(4)).

NOTE.—Repealed Dec. 9, 1969 and labor standards incorporated in sec. 1-1431 of the District of Columbia Code.

56. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89-694, but not in the United States Code.

57. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87-328) (considered a statute for purposes of this part but not in the United States Code).

58. Energy Security Act (Sec. 175(c), Pub. L. 96-294, 94 Stat. 611; 42 U.S.C. 8701 note).

APPENDIX B

Boston Region

For the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, JFK Federal Building, Government Center, Room 1612C, Boston, Massachusetts 02203 (telephone: 617-223-5565).

New York Region

For the States of New Jersey and New York and for the Canal Zone, Puerto Rico, and the Virgin Islands:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 1515 Broadway, Room 3300, New York, New York 10036 (telephone: 212-399-5443).

Philadelphia Region

For the States of Delaware, Maryland, Pennsylvania, Virginia, and West Virginia, and the District of Columbia:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Gateway Building, Room 15220, 3535 Market Street, Philadelphia, Pennsylvania 19104 (telephone: 215-596-1193).

Atlanta Region

For the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 1371 Peachtree Street, N.E., Room 305, Atlanta, Georgia 30309 (telephone: 404-881-4801).

Chicago Region

For the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 230 South Dearborn Street, 8th Floor, Chicago, Illinois 60604 (telephone: 312-353-7249).

Dallas Region

For the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 555 Griffin Square Building, Young and Griffin

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Streets, Dallas, Texas 75202 (telephone: 214-767-6891).

Kansas City Region

For the States of Iowa, Kansas, Missouri, and Nebraska:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 2000, 911 Walnut Street, Kansas City, Missouri 64106 (telephone: 816-374-5386).

Denver Region

For the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 1440, 1961 Stout Street, Denver, Colorado 80294 (telephone: 304-837-4613).

San Francisco Region

For the States of Arizona, California, Hawaii, and Nevada:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 450 Golden Gate Avenue, Room 10353, San Francisco, California 94102 (telephone: 415-556-3592).

Seattle Region

For the States of Alaska, Idaho, Oregon, and Washington:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 4141, 909 First Avenue, Seattle, Washington 98174 (telephone: 206-442-1916).

PART 2—GENERAL REGULATIONS

Subpart A—General

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AUTHORITY: 5 U.S.C. 301 and 5 U.S.C. 552-556, unless otherwise noted.

Subpart A—General

SOURCE: 32 FR 11035, July 28, 1967, unless otherwise noted.

§ 2.1 Employees attached to regional offices.

No person who has been an employee of the Department and attached to a Regional office of any bureau, board, division, or other agency thereof, shall be permitted to practice, appear, or act as attorney, agent, or representative before the Department or any branch or agent thereof in connection with any case or administrative proceeding which was pending before such Regional office during the time of his employment with the Department, unless he shall first obtain the written consent thereto of the Secretary of Labor or his duly authorized representative.

§ 2.2 Employees attached to Washington office.

No person who has been an employee of the Department and attached to the Washington office of any bureau, board, division, or other agency thereof, shall be permitted to practice, appear, or act as attorney, agent, or representative before the Department or any branch or agent thereof, in connection with any case or administra-

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tive proceeding pending before such bureau, board, division, or other agency during the time of his employment with the Department, unless he shall first obtain the written consent thereto of the Secretary of Labor or his duly authorized representative.

§ 2.3 Consent of the Secretary.

The consent of the Secretary or his duly authorized representative may be obtained as follows:

The applicant shall file an application in the form of an affidavit. Such application, directed to the Secretary should:

(a) State the former connection of the applicant with the Department;

(b) Identify the matter in which the applicant desires to appear, and

(c) Contain a statement to the effect that the applicant gave no personal consideration to such matter while he was an employee of the Department.

The application will be denied if the statements contained therein are disproved by an examination of the files, records, and circumstances pertaining to the matter, or if, in the opinion of the Secretary or his duly authorized representative, the public interest so requires. If the Secretary or his duly authorized representative is satisfied that the applicant gave no personal consideration to the matter in question while employed by the Department, and if he is satisfied that it is lawful and consistent with the public interest to do so, he may grant his consent, in writing, to the request of the applicant, subject to such conditions, if any, as he deems necessary and desirable. Any function of the Secretary under this section may be performed by the Under Secretary of Labor.

§ 2.4 [Reserved]

§ 2.6 Claims collection.

(a) *Authority of Department; incorporation by reference.* The regulations in this section are issued under section 3 of the Federal Claims Collection Act of 1966, 31 U.S.C. 952. They incorporate herein and supplement as necessary for Department operation all provisions of the Joint Regulations of the Attorney General and the Comptroller General set forth in 4 CFR, Ch. II, which prescribe standards for administrative collection of civil claims by the Government for money or property, for the compromise, termination, or suspension of collection action, with respect to claims not exceeding $20,000, exclusive of interest, and for the referral of civil claims by the Government to the General Accounting Office, and to the Department of Justice for litigation.

(b) *Designation.* The Assistant Secretary for Administration, and such heads of the Administrations and Offices of the Department of Labor as he may designate for such purpose, is authorized to perform all of the duties and exercise all of the authority of the Secretary under the Federal Claims Collection Act of 1966, the aforementioned Joint Regulations of the Attorney General and the Comptroller General, and the regulations in this section.

(Sec. 3, 80 Stat. 309; 31 U.S.C. 952)

[34 FR 9122, June 10, 1969]

§ 2.7 Rulemaking.

It is the policy of the Secretary of Labor, that in applying the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), the exemption therein for matters relating to public property, loans, grants, benefits or contracts shall not be relied upon as a reason for not complying with the notice and public participation requirements thereof except for all information-gathering procedures adopted by the Bureau of Labor Statistics.

[46 FR 35, Jan. 2, 1981]

Subpart B—Audiovisual Coverage of Administrative Hearings

SOURCE: 38 FR 5631, Mar. 2, 1973, unless otherwise noted.

§ 2.10 Scope and purpose.

This subpart defines the scope of audiovisual coverage of departmental administrative hearings. It describes the types of proceedings where such coverage is encouraged, defines areas where such coverage is prohibited (as in certain enforcement proceedings or where witnesses object) and areas where a decision concerning coverage is made after weighing the values involved in permitting coverage against the reasons for not permitting it.

§ 2.11 General principles.

The following general principles will be observed in granting or denying requests for permission to cover hearings audiovisually:

(a) Notice and comment and on-the-record rule making proceedings may involve administrative hearings. If such administrative hearings are held, we encourage their audiovisual coverage.

(b) Audiovisual coverage shall be excluded in adjudicatory proceedings involving the rights or status of individuals (including those of small corporations likely to be indistinguishable in the public mind from one or a few individuals) in which an individual's past culpable conduct or other aspect of personal life is a primary subject of adjudication, and where the person in question objects to coverage.

(c) Certain proceedings involve balancing of conflicting values in order to determine whether audiovisual coverage should be allowed. Where audiovisual coverage is restricted, the reasons for the restriction shall be stated in the record.

§ 2.12 Audiovisual coverage permitted.

The following are the types of hearings where the Department encourages audiovisual coverage:

(a) All hearings involving notice and comment and on-the-record rule making proceedings. The Administrative Procedure Act provides for notice of proposed rule making with provision for participation by interested parties through submission of written data, views, or arguments, with or without opportunity for oral presentation (5 U.S.C. 553). (In many cases the Department follows the above procedure in matters exempted from these requirements of 5 U.S.C. 553.) On-the-record rule making proceedings under 5 U.S.C. 556 and 557 are also hearings where audiovisual coverage of hearings is encouraged. Examples of hearings encompassed by this paragraph are:

(1) Hearings to establish or amend safety or health standards under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651.

(2) Hearings to determine the adequacy of State laws under the Occupational Safety and Health Act of 1970.

(b) Hearings to collect or review wage data upon which to base minimum wage rates determined under various laws, such as the Davis-Bacon Act (40 U.S.C. 276a) and related statutes and the Service Contract Act of 1965 (41 U.S.C. 353, as amended by Public Law 92-473 approved October 9, 1972).

(c) Hearings under section 4(c) of the Service Contract Act of 1965 (41 U.S.C. 353, subsection (c) added by Public Law 92-473 approved October 9, 1972) to determine if negotiated rates are substantially at variance with those which prevail in the locality for services of a character similar.

(d) Hearings before the Wage Appeals Board (Parts 1, 3, 5, and 7 of this chapter).

(e) Hearings held at the request of a Federal agency to resolve disputes under the Davis-Bacon and related Acts, involving prevailing wage rates or proper classification which involve significant sums of money, large groups of employees or novel or unusual situations.

(f) Hearings of special industry committees held pursuant to the Fair Labor Standards Act, as amended (29 U.S.C. 201 et seq.) for the purpose of recommending minimum wage rates to be paid in Puerto Rico, the Virgin Islands, and American Samoa.

(g) Hearings pursuant to section 13(a) of the Welfare and Pension Plans Disclosure Act (29 U.S.C. 308d) to determine whether a bond in excess of $500,000 may be prescribed.

(h) Hearings where the Department is requesting information needed for its administrative use in determining what our position should be (e.g., our hearings on the 4-day, 40-hour workweek).

§ 2.13 Audiovisual coverage prohibited.

The Department shall not permit audiovisual coverage of the following types of hearings if any party objects:

(a) Hearings to determine whether applications for individual variances should be issued under the Occupational Safety and Health Act of 1970.

(b) Hearings (both formal and informal) involving alleged violations of various laws such as the Davis-Bacon Act (40 U.S.C. 276a, et seq.) and related Acts, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.), the Service Contract Act (41 U.S.C. 351 et seq.), the Walsh Healey Act (41 U.S.C. 35 et seq.), under section 41 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941 et seq.), the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.), and any informal hearings or conferences under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) which are not within the jurisdiction of the Occupational Safety and Health Commission.

(c) Adversary hearings under the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) and related Acts, which determine an employee's right to compensation.

(d) Hearings which determine an employee's right to compensation under the Federal Employees' Compensation Act (5 U.S.C. 8101 et seq.).

§ 2.14 Proceedings in which the Department balances conflicting values.

In proceedings not covered by §§ 2.12 and 2.13, the Department should determine whether the public's right to know outbalances the individual's right to privacy. When audiovisual coverage is restricted or excluded, the record shall state fully the reasons for such restriction or exclusion. For example, there would be included in this category hearings before the Board of Contract Appeals involving appeals from contracting officer decisions involving claims for extra costs for extra work, extra costs for delay in completion caused by the Government or for changes in the work, conformity hearings arising under State unemployment insurance laws, etc.

§ 2.15 Protection of witnesses.

A witness has the right, prior to or during his testimony, to exclude audiovisual coverage of his testimony in any hearing being covered audiovisually.

§ 2.16 Conduct of hearings.

The presiding officer at each hearing which is audiovisually covered is authorized to take any steps he deems necessary to preserve the dignity of the hearing or prevent its disruption by persons setting up or using equipment needed for its audiovisual coverage.

Subpart C—Employees Served With Subpoenas

AUTHORITY: 5 U.S.C. 301 and Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263.

SOURCE: 46 FR 49543, Oct. 6, 1981, unless otherwise noted.

§ 2.20 Purpose, scope and definitions.

(a) This subpart sets forth the procedures to be followed whenever a subpoena, order, or other demand (hereinafter referred to as a "demand") of a court or other authority, in connection with a proceeding to which the U.S. Department of Labor is not a party, is issued for the production or disclosure of (1) any material contained in the files of the Department, (2) any information relating to material contained in the files of the Department, or (3) any information or material acquired by any person while such person was an employee of the Department as a part of the performance of his official duties or because of his official status.

(b) For purposes of this subpart, the term "employee of the Department" includes all officers and employees of the United States Department of Labor appointed by, or subject to the supervision, jurisdiction, or control of the Secretary of Labor.

(c)(1) For purposes of this subpart, the term "appropriate Deputy Solicitor of Labor" means the Deputy Solicitor of Labor for National Operations when the person served with a demand is either employed by the National Office of the Labor Department, or who is a former Labor Department employee and is served with a demand in Washington, D.C. In all other cases, the term "appropriate Deputy Solicitor of Labor" means the Deputy Solicitor of Labor for Regional Operations.

(2) For purposes of this subpart, the term "appropriate Office of the Solicitor" means that Office of the Associate Solicitor of Labor (in Washington, D.C.) serving as counsel to the program to which the demand relates, where the person served with a demand is employed by the National Office of the Labor Department, or who is a former Labor Department employee and is served with a demand in Washington, D.C. In all other cases, the term "appropriate Office of the Solicitor" means that Regional Solicitor's Office or Associate Regional Solicitor's Office serving the locality in which the employee or former employee is served with a demand.

(d) This subpart is intended to provide instructions regarding the internal operations of the Department of Labor, and is not intended, and does not, and may not, be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the Department of Labor.

§ 2.21 Procedure in the event of a demand for production or disclosure.

Whenever an employee or former employee of the Department receives a demand for the production of material or the disclosure of information described in § 2.20(a), he shall immediately notify the appropriate Office of the Solicitor. The appropriate Office of the Solicitor shall be furnished by the party causing the subpoena to be issued with a written summary of the information sought and its relevance to the proceeding in connection with which it was served. The Associate Solicitor, Regional Solicitor, or Associate Regional Solicitor, whichever is appropriate, may waive the requirement that a written summary be furnished where he or she deems it to be unnecessary. The election to waive the requirement of a written summary in no way constitutes a waiver of any other requirement set forth in this subpart.

§ 2.22 Production or disclosure prohibited unless approved by the appropriate Deputy Solicitor of Labor.

In terms of instructing an employee or former employee of the manner in which to respond to a demand, the Associate Solicitor, Regional Solicitor, or Associate Regional Solicitor, whichever is applicable, shall follow the instructions of the appropriate Deputy Solicitor of Labor. No employee or former employee of the Department of Labor shall, in response to a demand of a court or other authority, produce any material contained in the files of the Department or disclose any information relating to material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of his official duties or because of his official status without approval of the appropriate Deputy Solicitor of Labor.

§ 2.23 Procedure where a decision concerning a demand is not made prior to the time a response to the demand is required.

If the response to the demand is required before the instructions from the appropriate Deputy Solicitor of Labor are received, a Department attorney or other government attorney designated for the purpose shall appear with the employee or former employee of the Department upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate Deputy Solicitor of Labor and shall respectfully request the court or other authority to stay the demand pending receipt of the requested instructions.

§ 2.24 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 2.23 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand, *"United States ex rel Touhy* v. *Ragen,"* 340 US. 462.

§ 2.25 Subpoenas served upon employees of the Office of the Inspector General.

Notwithstanding the requirements set forth in §§ 2.20 through 2.24, this subpart is applicable to demands served on employees or former employees of the Office of the Inspector General (OIG), except that wherever in §§ 2.21 through 2.24 there appear the phrases "appropriate Office of the Solicitor", "Associate Solicitor, Regional Solicitor, or Associate Regional Solicitor," and "appropriate Deputy Solicitor of Labor", there shall be substituted in lieu thereof "the Inspector General or Deputy Inspector General." In addition, the first sentence of § 2.22 shall not be applicable to subpoenas served upon employees or former employees of the Office of the Inspector General.

PART 3—CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

Sec.

3.1 Purpose and scope.
3.2 Definitions.
3.3 Weekly statement with respect to payment of wages.
3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.
3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.
3.6 Payroll deductions permissible with the approval of the Secretary of Labor.
3.7 Applications for the approval of the Secretary of Labor.
3.8 Action by the Secretary of Labor upon applications.
3.9 Prohibited payroll deductions.
3.10 Methods of payment of wages.
3.11 Regulations part of contract.

AUTHORITY: R.S. 161, sec. 2, 48 Stat. 848; Reorg. Plan No. 14, of 1950, 64 Stat. 1267; 5 U.S.C. 301; 40 U.S.C. 276c.

SOURCE: 29 FR 97, Jan. 4, 1964, unless otherwise noted.

§ 3.1 Purpose and scope.

This part prescribes "anti-kickback" regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

§ 3.2 Definitions.

As used in the regulations in this part:

(a) The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines,

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pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a "building" or "work" within the meaning of the regulations in this part.

(b) The terms "construction," "prosecution," "completion," or "repair" mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms "public building" or "public work" include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term "building or work financed in whole or in part by loans or grants from the United States" includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is "employed" and receiving "wages," regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term "any affiliated person" includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

(g) The term "Federal agency" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

[29 FR 97, Jan. 4, 1964, as amended at 38 FR 32575, Nov. 27, 1973]

§ 3.3 Weekly statement with respect to payment of wages.

(a) As used in this section, the term "employee" shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by this Part 3 and Part 5 of this chapter during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on form

WH 348, "Statement of Compliance", or on an identical form on the back of WH 347, "Payroll (For Contractors Optional Use)" or on any form with identical wording. Sample copies of WH 347 and WH 348 may be obtained from the Government contracting or sponsoring agency, and copies of these forms may be purchased at the Government Printing Office.

(c) The requirements of this section shall not apply to any contract of $2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

[29 FR 97, Jan. 4, 1964, as amended at 33 FR 10186, July 17, 1968; 47 FR 23679, May 28, 1982]

EFFECTIVE DATE NOTE: At 47 FR 23679, May 28, 1982, paragraph (b) of § 3.3 was revised, effective July 27, 1982. At 47 FR 32070, July 26, 1982, the effective date was suspended indefinitely. For the convenience of the user, the suspended text appears below.

§ 3.3 Weekly statement with respect to payment of wages.

* * * * *

(b)(1) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by 29 CFR Parts 3 and 5 during the preceding weekly payroll period.

(2) Each "Statement of Compliance" shall be signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be maintained under § 5.5(a)(3)(i) of this chapter, 29 CFR Part 5 and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in §§ 3.5–3.8;

(iii) That each laborer or mechanic has been paid not less than the wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The willful falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 231 of Title 31 of the United States Code.

* * * * *

§ 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.

(a) Each weekly statement required under § 3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

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OMB CONTROL No. 1215-0017, paragraph (b). (47 FR 145, Jan. 5, 1982)

[29 FR 97, Jan. 4, 1964, as amended at 47 FR 145, Jan. 5, 1982]

§ 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

(a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.

(b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.

(c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: *Provided, however,* That the following standards are met:

(1) The deduction is not otherwise prohibited by law;

(2) It is either: (i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or (ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;

(3) No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and

(4) The deductions shall serve the convenience and interest of the employee.

(e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: *Provided, however,* That a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.

(j) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and Part 531 of this title. When such a deduction is made the additional records required under § 516.25(a) of this title shall be kept.

(k) Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not violative of the Fair Labor Standards Act or prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

[29 FR 97, Jan. 4, 1964, as amended at 36 FR 9770, May 28, 1971]

§ 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under § 3.5. The Secretary may grant permission whenever he finds that:

(a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;

(b) The deduction is not otherwise prohibited by law;

(c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and

(d) The deduction serves the convenience and interest of the employee.

§ 3.7 Applications for the approval of the Secretary of Labor.

Any application for the making of payroll deductions under § 3.6 shall comply with the requirements prescribed in the following paragraphs of this section:

(a) The application shall be in writing and shall be addressed to the Secretary of Labor.

(b) The application need not identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions on all current and future contracts of the applicant for a period of 1 year. A renewal of permission to make such payroll deduction will be granted upon the submission of an application which makes reference to the original application, recites the date of the Secretary of Labor's approval of such deductions, states affirmatively that there is continued compliance with the standards set forth in the provisions of § 3.6, and specifies any conditions which have changed in regard to the payroll deductions.

(c) The application shall state affirmatively that there is compliance with the standards set forth in the provisions of § 3.6. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.

(d) The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.

(e) The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

[29 FR 97, Jan. 4, 1964, as amended at 36 FR 9771, May 28, 1971]

§ 3.8 Action by the Secretary of Labor upon applications.

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provisions of § 3.6; and shall notify the applicant in writing of his decision.

§ 3.9 Prohibited payroll deductions.

Deductions not elsewhere provided for by this part and which are not found to be permissible under § 3.6 are prohibited.

§ 3.10 Methods of payment of wages.

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

§ 3.11 Regulations part of contract.

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see § 5.5(a) of this subtitle.

PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

NOTE: The President's Memorandum of January 29, 1981 (46 FR 11227, Feb. 6, 1981), directed Federal agencies to postpone for sixty days from January 29, 1981, the effective date of all regulations that they had promulgated in final form and had scheduled to become effective during such sixty day period.

Part 4 was revised at 46 FR 4337, Jan. 16, 1981, and the effective date subsequently postponed. For further explanation, see the appendix in the Finding Aids section of this volume.

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AUTHORITY: Secs. 2(a) and 4, 79 Stat. 1034, 1035; 41 U.S.C. 351, 353, and under 5 U.S.C. 301.

SOURCE: 33 FR 9880, July 10, 1968, unless otherwise noted.

Subpart A—Service Contract Labor Standards Provisions and Procedures

§ 4.1 Purpose and scope.

This part and Part 1925 of this title, which provides safety and health standards, contain the Department of

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Labor's rules relating to the administration of the McNamara-O'Hara Service Contract Act of 1965, referred to hereinafter as the Act. Rules of practice for administrative proceedings enforcing labor standards in Federal service contracts are contained in Part 6 of this chapter.

[33 FR 9880, July 10, 1968, as amended at 43 FR 28467, June 30, 1978]

§ 4.1a The Act as amended.

(a) The provisions of the Act (see §§ 4.102-4.103) were amended, effective October 9, 1972, by Public Law 92-473, signed into law by the President on that date. By virtue of amendments made to paragraphs (1) and (2) of section 2(a) and the addition to section 4 of a new subsection (c), the compensation standards of the Act (see §§ 4.159-4.164) were revised to impose on successor contractors certain requirements (see § 4.1c) with respect to payment of wage rates and fringe benefits based on those agreed upon for substantially the same services for the same location in collective bargaining agreements entered into by their predecessor contractors (unless such agreed compensation is substantially at variance with that locally prevailing or the agreement was not negotiated at arm's length), and to require the Secretary of Labor to give effect to the provisions of such collective bargaining agreements in his wage determinations under section 2 of the Act. A new paragraph (5) added to section 2(a) of the Act requires a statement in the government service contract of the rates that would be paid by the contracting agency in the event of its direct employment of those classes of service employees to be employed on the contract work who, if directly employed by the agency, would receive wages determined as provided in 5 U.S.C. 5341. The Secretary of Labor is directed to give due consideration to such rates in determining minimum monetary wages and fringe benefits under the Act's provisions. Other provisions of the 1972 amendments include the addition of a new section 10 to the Act to insure extension of coverage by wage determinations of the Secretary to substantially all service contracts subject to section 2(a) of the Act at the earliest administratively feasible time; an amendment to section 4(b) of the Act to provide, in addition to the conditions previously specified for issuance of administrative limitations, variations, tolerances, and exemptions (see § 4.123), that administrative action in this regard shall be taken only in special circumstances where the Secretary determines that it is in accord with the remedial purpose of the Act to protect prevailing labor standards; and a new subsection (d) added to section 4 of the Act providing for the award of service contracts for terms not more than 5 years with provision for periodic adjustment of minimum wage rates and fringe benefits payable thereunder by the issuance of wage determinations by the Secretary of Labor during the term of the contract. A further amendment to section 5(a) of the Act requires the names of contractors found to have violated the Act to be submitted for the debarment list (see § 4.188) not later than 90 days after the hearing examiner's finding of violation unless the Secretary recommends relief, and provides that such recommendations shall be made only because of unusual circumstances.

(b) The provisions of the Act were amended by Pub. L. 93-57, 87 Stat. 140, effective July 6, 1973, to extend the Act's coverage to Canton Island.

(c) The provisions of the Act were amended by Pub. L. 94-489, 90 Stat. 2358, approved October 13, 1976, to extend the Act's coverage to white collar workers. Accordingly, the minimum wage protection of the Act now extends to all workers, both blue collar and white collar, other than persons employed in a bona fide executive, administrative, or professional capacity as those terms are used in the Fair Labor Standards Act and in Part 541 of Title 29. Pub. L. 94-489 accomplished this change by adding to Section 2(a)(5) of the Act a reference to 5 U.S.C. 5332, which deals with white collar workers, and by amending the definition of service contract employee in Section 8(b) of the Act.

(d) Included in this Subpart A and in Part 6 of this subtitle are provisions to give effect to the amendments mentioned in this section. Until editorial revisions of other provisions of this part can be made to conform to the Act as amended, such provisions should be read in conjunction with the statutory amendments referred to in this section.

[37 FR 25468, Nov. 30, 1972, as amended at 42 FR 43064, Aug. 26, 1977]

§ 4.1b Definitions and use of terms.

(a) As used in this part, unless otherwise indicated by the context—

(1) "Secretary" includes the Secretary of Labor, the Assistant Secretary of Labor for Employment Standards, and their authorized representatives.

(2) "Administrator" means the Administrator of the Wage and Hour Division, or his authorized representative as set forth in this part. In the absence of the Wage-Hour Administrator, the Deputy Administrator of the Wage and Hour Division, is designated to act for him under this part. Except as otherwise provided in this part, the Assistant Administrator for Government Contract Wage Standards is the authorized representative of the Administrator for the performance of functions relating to the making and effectuation of wage determinations under the Service Contract Act of 1965, as amended, and this part.

(3) "Office of Government Contract Wage Standards" or "OGCWS" means the organizational unit in the Wage and Hour Division, Employment Standards Administration, to which is assigned the performance of functions of the Secretary under the Service Contract Act of 1965 as amended.

(4) "Contract" includes any contract subject wholly or in part to provisions of the Service Contract Act of 1965 as amended, and any subcontract of any tier thereunder. (See §§ 4.107-4.134.)

(5) "Contractor" includes a subcontractor whose subcontract is subject to provisions of the Act.

(6) "Wage determination" includes any determination of minimum wage rates or fringe benefits made pursuant to the provisions of section 2(a) of the Act for application to the employment in a locality of any class or classes of service employees in the performance of any contract in excess of $2,500 which is subject to the provisions of the Service Contract Act of 1965.

(7) "Act," "Service Contract Act," or "Service Contract Act of 1965" shall mean the Service Contract Act of 1965 as amended by Public Law 92-473, 86 Stat. 789, effective October 9, 1972, Pub. L. 93-57, 87 Stat. 140, effective July 6, 1973, and Pub. L. 94-489, 90 Stat. 2358, effective October 13, 1976.

[37 FR 25468, Nov. 30, 1972, as amended at 42 FR 43064, Aug. 26, 1977; 43 FR 28467, June 30, 1978]

§ 4.1c Payment of minimum compensation based on collectively bargained wage rates and fringe benefits applicable to employment under predecessor contract.

(a) Section 4(c) of the Service Contract Act of 1965 as amended provides special minimum wage and fringe benefit requirements applicable to every contractor and subcontractor under a contract which succeeds a contract subject to the Act and under which substantially the same services as under the predecessor contract are furnished for the same location. Section 4(c) provides that no such contractor or subcontractor shall pay any employee employed on the contract work less than the wages and fringe benefits provided for in a collective bargaining agreement as a result of arms-length negotiations, to which such services employees would have been entitled if they were employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for in such collective bargaining agreement. If, however, the Secretary finds after a hearing in accordance with the regulations set forth in § 4.10 of this subpart that in any of the foregoing circumstances such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality, the payment obligations of such contractor or subcontractor with respect thereto shall not apply in such circumstances.

(b) Pursuant to section 4(b) of the Act, the application of section 4(c) is made subject to the following variation in the circumstances and under the conditions described: The wage rates and fringe benefits provided for in any collective bargaining agreement applicable to the performance of work under the predecessor contract which is consummated during the period of performance of such contract shall not be effective for purposes of the successor contract under the provisions of section 4(c) of the Act or under any wage determination implementing such section issued pursuant to section 2(a) of the Act, if—

(1) In the case of a successor contract for which bids have been invited by formal advertising notice of the terms of such new or changed collective bargaining agreement is received by the contracting agency less than 10 days before the date set for opening of bids, or

(2) In the case of a successor contract to be entered into pursuant to negotiations, or in the case of the execution of an option or an extension of the initial contract term, such notice of the terms of such new or changed collective bargaining agreement is received by the agency less than 10 days before commencement of the contract;

(3) If under either paragraph (b) (1) or (2) of this section the contracting agency finds that there is not reasonable time still available to notify bidders or to incorporate the newly bargained wage rates and fringe benefits in the successor contract, as the case may be; and

(4) The 10-day limitation in paragraph (b) (1) or (2) of this section shall apply only if the contracting officer has given both the incumbent (predecessor) contractor and his employees' collective bargaining representative notification at least 30 days in advance of any estimated procurement date, such as issue of bid solicitation, bid opening, date of award, or the commencement date of a contract resulting from a negotiation, option, or extension, as the case may be.

[37 FR 25468, Nov. 30, 1972, as amended at 41 FR 5388, Feb. 6, 1976]

§ 4.2 Payment of minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 under all service contracts.

Section 2(b)(1) of the Service Contract Act of 1965 provides in effect that, regardless of contract amount, no contractor or subcontractor performing work under any Federal contract the principal purpose of which is to furnish services through the use of service employees shall pay any of his employees engaged in such work less than the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended ($2.65 per hour beginning January 1, 1978, $2.90 per hour beginning January 1, 1979, $3.10 per hour beginning January 1, 1980, and $3.35 per hour after December 31, 1980).

[43 FR 1491, Jan. 10, 1978]

§ 4.3 Register of wage determinations.

(a) The minimum monetary wages and fringe benefits for service employees which the Act requires to be specified in contracts and bid specifications subject to section 2(a) thereof will be set forth in wage determinations issued by the Administrator as an orderly series constituting a register of such minimum wages and fringe benefits. The register shall include, as soon as administratively feasible, wage determinations applicable to all contracts subject to section 2(a) of the Act, and will include in any event, for the localities in which services under such contracts are to be furnished, wage determinations applicable to all contracts entered into during the following years under which more than the stated number of service employees are to be employed: (1) Fiscal year ending June 30, 1973—25; (2) ending June 30, 1974—20; (3) ending June 30, 1975—15; (4) ending June 30, 1976—10; (5) ending June 30, 1977, and for each fiscal year thereafter—5.

(b) Such wage determinations will set forth for the various classes of service employees to be employed in furnishing services under such contracts in the several localities, minimum monetary wage rates to be paid and minimum fringe benefits to be furnished them during the periods when they are engaged in the performance of such contracts, including, where appropriate under the Act, provisions for adjustments in such minimum rates and benefits to be placed in effect under such contracts at specified future times. The wage rates and fringe benefits set forth in such wage determinations shall be determined in accordance with the provisions of sections 2(a) (1), (2), and (5), 4(c) and 4(d) of the Act from those prevailing in the locality for such employees and from pertinent collective bargaining agreements, with due consideration of the rates that would be paid for direct Federal employment of any classes of such employees whose wages, if federally employed, would be determined as provided in 5 U.S.C. 5341 or 5 U.S.C. 5332. Unless otherwise specified in the wage determination, the wage rates and fringe benefits so determined for any class of service employees to be engaged in furnishing covered contract services in a locality shall be made applicable by contract to all service employees of such class employed to perform such services in the locality under any contract subject to section 2(a) of the Act which is entered into thereafter and before such determination has been rendered obsolete by a withdrawal, modification, or supersedure.

(c) Wage determinations included in the register will be available for public inspection during business hours at the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and copies will be made available on request at Regional Offices of the Wage and Hour Division.

[37 FR 25469, Nov. 30, 1972, as amended at 42 FR 43064, Aug. 26, 1977; 43 FR 28467, June 30, 1978]

§ 4.4 Notice of intention to make a service contract.

(a) Not less than 30 days prior to any invitation for bids, request for proposals, or commencement of negotiations for any contract exceeding $2,500 which may be subject to the Act, the contracting agency shall file with the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, Department of Labor, its notice of intention to make a service contract. Such notice shall be submitted on Standard Form 98, Notice of Intention to Make a Service Contract, which shall be completed in accordance with the instructions provided and shall be supplemented by the information required under paragraphs (b) and (c) of this section. Supplies of Standard Form 98 are available in all GSA supply depots under stock number 7540-926-8972.

(b) The contracting agency shall file with its Notice of Intention to Make a Service Contract (SF-98) a statement in writing containing the following information concerning the service employees expected by the agency to be employed by the contractor and any subcontractors in performing the contract:

(1) The number of such employees of all classes, or a statement indicating whether such number will or will not exceed the number for which a wage determination is mandatory under the provisions of § 4.3(a); and

(2) A listing of those classes of service employees expected to be employed under the contract which, if employed by the agency, would be subject to the wage provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332, together with a specification of the rates of wages and fringe benefits that would be paid by the Government to employees of each such class if such statute were applicable to them. (Under section 2(a)(5) of the Act and § 4.6 the inclusion of such a statement in the service contract is also required.)

(c) If the services to be furnished under the proposed contract will be substantially the same as services being furnished for the same location by an incumbent contractor whose contract the proposed contract will succeed, and if such incumbent contractor is furnishing such services through the use of service employees whose wage rates and fringe benefits are the subject of one or more collective bargaining agreements, the contracting agency shall file with its Notice of Intention to Make a Service Contract (SF-98) a copy of each such collective bargaining agreement together with any related documents specifying the wage rates and fringe benefits currently or prospectively payable under such agreement. If such services are being furnished for more than one location and the collectively bargained wage rates and fringe benefits are different for different locations or do not apply for one or more locations, the agency shall identify the locations to which such agreements have application. In the event that the agency has reason to believe that any such collective bargaining agreement was not entered into as a result of arms-length negotiations, a full statement of the facts so indicating shall be transmitted with the copy of such agreement. If the agency has information indicating that any such collectively bargained wage rates and fringe benefits are substantially at variance with those prevailing for services of a similar character in the locality, the agency shall so advise the Office of Government Contract Wage Standards and, if it believes a hearing thereon pursuant to section 4(c) of the Act is warranted, shall file its request for such hearing pursuant to § 4.10 at the time of filing the Notice of Intention to Make a Service Contract (Form SF-98).

(d) Any Standard Form 98 submitted by a contracting agency without the information required under paragraphs (b) and (c) of this section will be returned to the agency for further action.

(e) If exceptional circumstances prevent the filing of the notice of intention and supplemental information required by this section on a date at least 30 days prior to any invitation for bids, request for proposals, or commencement of negotiations for a proposed contract subject to section 2(a) of the Act, the notice shall be submitted to the Office of Government Contract Wage Standards as soon as practicable with a detailed explanation of the special circumstances which prevented timely submission.

[37 FR 25469, Nov. 30, 1972, as amended at 42 FR 43064, Aug. 26, 1977; 43 FR 28467, June 30, 1978]

§ 4.5 Contract specification of determined minimum wages and fringe benefits.

(a) Any contract agreed upon in excess of $2,500 shall contain an attachment specifying the minimum wages and fringe benefits for service employees to be employed thereunder, as determined in any applicable currently effective wage determination made and included in the register as provided in § 4.3, including any expressed in any document referred to in paragraphs (a) (1) or (2) of this section:

(1) Any communication from the Office of Government Contract Wage Standards, Wage and hour Division, Employment Standards Administration, Department of Labor, responsive to the notice required by § 4.4; or

(2) Any revision of the register by a wage determination issued prior to the award of the contract or contracts which specifies minimum wage rates or fringe benefits for classes of service employees whose wages or fringe benefits were not previously covered by wage determinations in the register, or which changes previously determined minimum wage rates and fringe benefits for service employees employed on covered contracts in the locality. However, revisions received by the Federal agency later than 10 days before the opening of bids, in the case of contracts entered into pursuant to competitive bidding procedures, shall not be effective if the Federal agency finds that there is not a reasonable time still available to notify bidders of the revision. In situations under section 4(c) of the Act, the provisions in § 4.1c(b) apply.

(b)(1) The following exemptions from the compensation requirements of section 2(a) of the Act apply, subject to the limitations set forth in paragraphs (b) (2), (3), and (4) of this section: To avoid serious impairment of the conduct of Government business it has been found necessary and proper to provide exemption (i) from the determined wage and fringe benefits section of the Act (section 2(a)(1), (2)) but not the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (section 2(b) of this Act), of all contracts for which no such wage or fringe benefit has been determined for any class of service employees to be employed thereunder; and (ii) from the fringe benefits section (section 2(a)(2)) of all contracts and of all classes of service employees employed thereunder if no such benefits have been determined for any such class of service employees.

(2) The exemptions provided in paragraph (b)(1) of this section, which were adopted pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, do not extend to undetermined wages or fringe benefits in contracts for which one or more, but not all, classes of service employees are the subject of an applicable wage determination. The procedure for determination of wage rates and fringe benefits for any classes of service employees engaged in performing such contracts whose wages and fringe benefits are not specified in a wage determination included in the register is set forth in § 4.6(b).

(3) The exemptions provided in paragraph (b)(1) of this section do not apply to any contract for which section 10 of the Act as amended and § 4.3 of this part require an applicable wage determination.

(4) The exemptions provided in paragraph (b)(1) of this section do not exempt any contract from the application of the provisions of section 4(c) of the Act as amended.

(c) If the notice of intention required by § 4.4 is not filed with the required supporting documents within the time provided in such section, the contracting agency shall exercise any and all of its power that may be needed (including, where necessary, its power to negotiate, its power to pay any necessary additional costs, and its power under any provision of the contract authorizing changes) to include in the contract any wage determinations communicated to it within 30 days of the filing of such notice or of the discovery by the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, of such omission.

[37 FR 25469, Nov. 30, 1972, as amended at 41 FR 5388, Feb. 6, 1976; 43 FR 28467, June 30, 1978]

§ 4.6 Labor standards clauses for Federal service contracts exceeding $2,500.

The clauses set forth in the following paragraphs shall be included in every contract (and any bid specification therefor) entered into by the United States or the District of Columbia, in excess of $2,500, the principal purpose of which is to furnish services through the use of service employees:

(a) Service Contract Act of 1965: This contract, to the extent that it is of the character to which the Service Contract Act of 1965, as amended (41 U.S.C. 351) applies, is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor thereunder (this Part 4).

(b)(1) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wage and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or his authorized representative, as specified in any attachment to this contract.

(2) If there is such an attachment, any class of service employees which is not listed therein, but which is to be employed under this contract, shall be classified by the contractor so as to provide a reasonable relationship between such classifications and those listed in the attachment, and shall be paid such monetary wages and furnished such fringe benefits as are determined by agreement of the interested parties, who shall be deemed to be the contracting agency, the contractor, and the employees who will perform on the contract or their representatives. If the interested parties do not agree on a classification or reclassification which is, in fact, conformable, the contracting officer shall submit the question, together with his recommendation, to the Office of Government Contract Wage Standards, Wage and Hour Division, ESA, of the Department of Labor for final determination. Failure to pay such employees the compensation agreed upon by the interested parties or finally determined by the Administrator or his authorized representative shall be a violation of this contract. No employee engaged in performing work on this contract shall in any event be paid less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(3) If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(c) The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subparts B and C of this part, and not otherwise.

(d)(1) In the absence of a minimum wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any of his employees performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(2) If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then in the absence of a minimum wage attachment for this contract neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work less than the wages and fringe benefits, provided for in such collective bargaining agreements, to which such employee would be entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of § 4.1c(b) apply or unless the Secretary of Labor or his authorized representative determines that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arms-length negotiations, or finds, after a hearing as provided in Labor Department regulations, 29 CFR 4.10 that the wages and fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality.

(e) The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post a notice of such wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.

(f) The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the contractor or subcontractor shall comply with the safety and health standards applied under Part 1925 of this title.

(g) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work records containing the information specified in paragraphs (g)(1) through (5) of this section for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor.

(1) His name and address.

(2) His work classification or classifications, rate or rates of monetary wages and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation.

(3) His daily and weekly hours so worked.

(4) Any deductions, rebates, or refunds from his total daily or weekly compensation.

(5) A list of monetary wages and fringe benefits for those classes of service employees not included in the minimum wage attachment to this contract, but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or his authorized representative pursuant to the labor standards clause in paragraph (b) of this section. A copy of the report required by the clause in paragraph (k)(1) of this section shall be deemed to be such a list.

(h) The contracting officer shall withhold or cause to be withheld from the Government prime contractor under this or any other Government contract with the prime contractor such sums as he, or an appropriate officer of the Labor Department, decides may be necessary to pay underpaid employees. Additionally any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965 may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(i) The contractor agrees to insert these clauses relating to the Service Contract Act of 1965 in all subcontracts. The term "contractor" as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

(j)(1) As used in these clauses relating to the Service Contract Act of 1965, as amended, the term "service employee" means any person engaged in the performance of a contract entered into by the United States and not exempted under Section 7, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(2) The following classes of service employees expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332 and would, if so employed, be paid not less than the following rates, of wages and fringe benefits:

Employee class	Monetary wage-fringe benefits

(k)(1) If there is a wage determination attached to this contract and one or more classes of service employees which are not listed thereon are to be employed under the contract, the contractor shall report to the contracting officer the monetary wages to be paid and the fringe benefits to be provided each such class of service employee. Such report shall be made promptly as soon as such compensation has been determined as provided in the clause in paragraph (b) of this section.

(2) If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime contractor shall report such fact to the contracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service em-

ployees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof.

(l) All interpretations of the Service Contract Act of 1965 expressed in Subpart C of this part, are hereby incorporated by reference in this contract.

(m) These clauses relating to the Service Contract Act of 1965 shall not apply to the following:

(1) Any contract of the United States or District of Columbia for construction, alteration and/or repair, including painting and decorating of public buildings or public works;

(2) Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036);

(3) Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line, or oil or gas pipeline where published tariff rates are in effect, or where such carriage is subject to rates covered by section 22 of the Interstate Commerce Act;

(4) Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;

(5) Any contract for public utility services, including electric light and power, water, steam, and gas;

(6) Any employment contract providing for direct services to a Federal agency by an individual or individuals;

(7) Any contract with the Post Office Department, the principal purpose of which is the operation of postal contract stations;

(8) Any services to be furnished outside the United States. For geographic purposes, the "United States" is defined in section 8(d) of the Service Contract Act to include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, Johnston Island and Canton Island. It does not include any other territory under the jurisdiction of the United States or any U.S. base or possession within a foreign country;

(9) Any of the following contracts exempted from all provisions of the Service Contract Act of 1965, pursuant to section 4(b) of the Act, which exemptions the Secretary of Labor, prior to amendment of such section by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(i) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom;

(ii) Any contract entered into by the U.S. Postal Service with an individual owner-operator for mail service where it is not contemplated at the time the contract is made that such owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness or accident.

(n) Notwithstanding any of the clauses in paragraphs (b) through (l) of this section, relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1)(i) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section

2(a)(1) or 2(b)(1) of the Service Contract Act of 1965, without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (Parts 520, 521, 524, and 525 of this title).

(ii) The Administrator will issue certificates under the Service Contract Act of 1965 for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (Parts 520, 521, 524, and 525 of this title).

(iii) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

(2) An employee engaged in an occupation in which he customarily and regularly receives more than $20 a month in tips ($30 a month on and after January 1, 1978) may have the amount of his tips credited by his employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with the regulations in Part 531 of this title: *Provided, however,* That the amount of such credit may not exceed $1.325 per hour, beginning January 1, 1978, $1.305 per hour, beginning January 1, 1979, $1.24 per hour beginning January 1, 1980 and $1.34 per hour after December 31, 1980. If the employer pays in full cents the $1.325 figure must be rounded down to $1.32 and the $1.305 figure to $1.30.

If the employer rounded the figures upward he would be claiming a credit of a higher percentage than is authorized by law.

OMB CONTROL No. 1215-0126, paragraphs (b)(2), (g), and (k). (47 FR 145, Jan. 5, 1982; 47 FR 14706, Apr. 6, 1982)

[37 FR 25470, Nov. 30, 1972, as amended at 39 FR 14943, Apr. 29, 1974; 41 FR 5388, Feb. 6, 1976; 42 FR 43064, Aug. 26, 1977; 43 FR 1491, Jan. 10, 1978; 43 FR 28467, June 30, 1978; 47 FR 145, Jan. 5, 1982; 47 FR 14706, Apr. 6, 1982]

§ 4.7 Labor standards clause for Federal service contracts not exceeding $2,500.

Every contract with the Federal Government which is not in excess of $2,500 but has as its principal purpose the furnishing of services through the use of service employees shall contain the following clause:

Service Contract Act of 1965. Except to the extent that an exemption, variation or tolerance would apply pursuant to 29 CFR 4.6 if this were a contract in excess of $2,500, the contractor and any subcontractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. All regulations and interpretations of the Service Contract Act of 1965 expressed in 29 CFR Part 4 are hereby incorporated by reference in this contract.

[37 FR 25472, Nov. 30, 1972]

§ 4.8 Notice of awards.

Whenever an agency of the United States or the District of Columbia shall award a contract which may be in excess of $2,500 subject to the Act, it shall furnish the Office of Government Contract Wage Standards, Wage and Hour Division, ESA, an original and one copy of Standard Form 99, Notice of Award of Contract. The form shall be completed as follows:

(a) Items 1 through 7 and 12 and 13: Self-explanatory;

(b) Item 8: Enter the notation "Service Contract Act of 1965;"

(c) Item 9: Leave blank;

(d) Item 10: (1) Enter the notation "Major Category," and indicate beside this entry the general service area into which the contract falls (e.g., food services, grounds maintenance, computer services, installation or facility support services, custodial-janitorial service, garbage collection, insect and rodent control, laundry and drycleaning services), and (2) enter the heading "Detailed Description," and following this entry set forth a detailed description of the services to be performed; and

(e) Item 11: Enter the dollar amount of the contract, or the estimated dollar value with the notation "estimated" (if the exact amount is not known). If neither the exact nor the estimated dollar value is known, enter "indefinite," or "not to exceed $————————." Supplies of Standard Form 99 are available in all GSA supply depots under stock number 7540-634-4049.

[37 FR 25472, Nov. 30, 1972, as amended at 43 FR 28467, June 30, 1978]

HEARINGS PURSUANT TO SECTION 4(c) OF THE ACT

§ 4.10 Provisions for hearing.

(a) *Statutory provision.* Under section 4(c) of the Act, and under wage determinations made as provided in section 2(a) (1) and (2) of the Act, contractors and subcontractors performing certain contracts subject to the Act may be obliged to pay to service employees employed on the contract work wages and fringe benefits not less than those to which they would be entitled if they were employed on like work under a predecessor contract for which the wages and fringe benefits of service employees were governed by a collective bargaining agreement. (See §§ 4.1a, 4.1c, 4.3(b), 4.6(b), 4.6(d)(2).) Section 4(c) provides, however, that "such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality."

(b) *Prerequisites for hearing.* (1) No hearing on the issue whether monetary wage rates and fringe benefits otherwise payable to service employees by virtue of the provisions of section 4(c) of the Act are substantially at variance with those which prevail for services of a character similar in the locality will be provided unless it appears from information available to the Administrator or submitted with a request for such a hearing that evidence showing, prima facie, that such a substantial variance exists will be presented.

(2) When it appears from the information available to him or submitted with such a request that such evidence sufficient to warrant an administrative determination of the issue will be presented, the Administrator on his own motion or on application of any person affected may by order refer the issue to a hearing officer for final determination in a proceeding held as provided in this section. As provided in section 4(a) of the Act, the provisions of sections 4 and 5 of the Walsh-Healey Public Contracts Act (41 U.S.C. 38, 39) shall be applicable to such proceeding.

(3) The Administrator shall designate as hearing officer for a proceeding under this section an administrative law judge assigned for the purpose by the Chief Administrative Law Judge of the Department.

(4) A request for a hearing under this section may be made by the contracting agency or other person affected or interested including contractors or prospective contractors and associations of contractors, representatives of employees or their unions, and other interested governmental agencies. Such a request must be submitted in writing to the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, Department of Labor, Washington, D.C. 20210 for the attention of the Administrator, and must describe the evidence on which the applicant relies to show a substantial variance between the collectively bargained rates or fringe benefits in question and the wages and fringe benefits prevailing for services of a similar character in the locality. If the information prerequisite for hearing as described in paragraph (b)(1) of this section is not submitted with the request, the Administrator may deny the request or request supplementary information, in his discretion. No particular form for submission of a request under this section is prescribed.

(5) Pursuant to section 4(b) of the Act, requests for a hearing shall not be considered unless received as specified below except in those situations where the Administrator determines that extraordinary circumstances exist:

(i) For advertised contracts, prior to ten days before the award of the contract;

(ii) For negotiated contracts and for contracts with provisions extending the initial term by option, prior to the commencement date of the contract or the follow-up option period, as the case may be.

(c) *Opportunity to be heard.* (1) In any proceeding under this section opportunity to be heard will be afforded to persons who may be affected by determination of the issue, including the agency whose contract is involved, any contractor or subcontractor performing on such contract or known to be desirous of bidding thereon or performing services thereunder, any unions or other authorized representatives of service employees employed or who may be expected to be employed by such a contractor or subcontractor on the contract work, and any other known interested persons. Such opportunity will be afforded at the earliest possible time after referral to the hearing officer and the proceeding will be expedited to completion and a final determination made on the issue as soon as possible thereafter.

(2) Upon referral of the issue to the hearing officer by the Administrator, written notice shall be given to the persons who may be affected by the determination (see paragraph (c)(1) of this section) specifying a place where and a period (not less than 5 and not more than 10 days) within which they may submit in writing any factual evidence, data, views, or arguments on the issue which they desire to have considered by the hearing officer. Such notice shall also make provision for furnishing copies of such documents to all parties and specify reasonable but expeditious time limits, not more than 10 days in the absence of exceptional circumstances, within which each of the interested persons may thereafter review and respond, if desired, in writing to any matter submitted by the others. Such notice shall, whenever practicable, be included in the Administrator's order referring the matter to the hearing officer, and if not so included shall be given by the hearing officer promptly upon his assignment to the case. The order and notice shall be served upon the persons interested by certified mail or in such other manner as will provide record proof or acknowledgment of receipt by such persons.

(3) Upon completion of the period for review and comment by interested persons on matter submitted by other interested persons the hearing officer shall forthwith review, with such assistance as may be made available by the Administrator, all material submitted and, after evaluating the same, shall make a tentative determination on the issue. Prompt notice in writing of his tentative determination shall be given to all parties who have submitted matter for consideration or have otherwise made known their interest. Such notice shall set an early date and a place at which such parties may appear before the hearing officer for resolution on an informal basis or through agreement, if possible, of any areas of conflict between them which may appear from the materials presented to the hearing officer, and for agreement, if possible, or for decision by the hearing officer as to the scope and nature of any further hearing that may be required for the presentation by any party of evidence and argument on issues that cannot be resolved by the hearing officer with agreement of the parties. Service of the notice on the parties shall be made as provided in paragraph (c)(2) of this section. All procedure set forth in this paragraph (c)(3), including hearing of the parties informally pursuant to such notice, shall be completed not less than 10 days after the final date for submission of materials in writing by the parties as provided under paragraph (c)(2) of this section.

(4) If as a result of the informal hearing provided as set forth in paragraph (c)(3) of this section there is agreement among the parties that no further hearing is necessary to supplement the written evidence and the views and arguments that have been presented to the hearing officer the

hearing officer shall forthwith render his final decision.

(5) If as a result of the informal hearing provided as set forth in paragraph (c)(3) of this section a further hearing, limited to matters remaining in controversy among the parties or to the presentation of other evidence deemed necessary by parties to a fair hearing of their contentions, is ordered by the hearing officer, he shall set a place and an early time therefor, not later than 5 days after the date of such informal hearing, and, after consultation with the parties, set reasonable guidelines and limitations for the presentations to be made at the hearing which will serve to expedite the proceeding to the extent possible consistent with adequate opportunity for the parties to be heard. At any such hearing there shall be a minimum of formality in the proceeding consistent with orderly procedure. The hearing officer may, to the extent appropriate, conduct the hearing in accordance with procedures prescribed in Part 6 of this Subtitle A, and may exercise the powers of a hearing officer as set forth therein. If oral testimony is presented, it shall be stenographically reported and a transcript thereof filed, together with all written materials submitted and orders and notices issued in the proceeding (with evidence of service thereof), in a case file which shall constitute the hearing record. The hearing officer shall promptly and not more than 5 days after completion of the hearing under this paragraph, render his decision.

(d) *Decision of hearing officer.* The hearing officer shall render a decision as provided in paragraph (c)(4) or (5) of this section based on findings of fact set forth in the decision, which shall have the finality accorded to a decision of the Secretary under the provisions of 41 U.S.C. 39. Such decision shall be filed with the case record and copies shall be transmitted promptly to the parties and to the Administrator, who shall cause to be issued any necessary wage determinations in conformance thereto.

[37 FR 25472, Nov. 30, 1972, as amended at 41 FR 5388, Feb. 6, 1976; 43 FR 28467, June 30, 1978]

Subpart B—Equivalents of Determined Fringe Benefits

§ 4.51 Discharging fringe benefit obligations by equivalent methods.

Section 2(a)(2) of the Act, which provides for fringe benefits that are separate from and additional to the monetary compensation required under section 2(a)(1), permits an employer to discharge his obligation to provide the specified fringe benefits by furnishing any equivalent combinations of "bona fide" fringe benefits or by making equivalent or differential payments in cash. However, credit for such payments is limited to the employer's fringe benefit obligations under section 2(a)(2), since the Act does not authorize any part of the monetary wage required by section 2(a)(1) and specified in the wage determination and the contract, to be offset by the fringe benefit payments or equivalents which are furnished or paid pursuant to section 2(a)(2).

§ 4.52 Equivalent fringe benefits.

Under this Act, fringe benefit obligations may be discharged by furnishing, in lieu of those fringe benefits determined by the Secretary and specified in the contract, other bona fide fringe benefits which the contractor or subcontractor is not required by statute to provide, or any combination of such bona fide fringe benefits: *Provided,* That they are "equivalent" in terms of monetary cost to the employer. Thus, if an applicable determination specifies that 10 cents per hour is to be paid into a pension fund, this fringe benefit obligation will be deemed to be met if instead, hospitalization benefits costing not less than 10 cents per hour are provided. The same obligation will be met if hospitalization benefits costing 5 cents an hour and holiday pay equal to 5 cents an hour in cash are provided. No benefit required to be furnished the employee by any other law, such as workers' compensation, may be credited toward satisfying the fringe benefit requirements of the Act.

[33 FR 9880, July 10, 1968, as amended at 43 FR 28467, June 30, 1978]

§ 4.53 Cash equivalents.

(a) Fringe benefit obligations may be discharged by paying, in addition to the monetary wage required, a cash amount per hour in lieu of the specified fringe benefits provided such amount is equivalent to the cost of the fringe benefits required. If, for example, an employee's monetary rate under an applicable determination is $3.50 an hour, and the fringe benefits to be furnished are hospitalization benefits costing 10 cents an hour and retirement benefits costing 10 cents an hour, the fringe benefit obligation is discharged if instead of furnishing the required fringe benefits the employer pays the employee, in cash, 20 cents per hour as the cash equivalent of the fringe benefits in addition to the $3.50 per hour required under the applicable wage determination.

(b) The hourly cash equivalent of those fringe benefits which are not listed in the applicable determination in terms of hourly cash amount may be obtained by mathematical computation through the use of pertinent factors such as the monetary wages paid the employee and the hours of work attributable to the period, if any, by which fringe benefits are measured in the determination. If the employee's regular rate of pay is greater than the minimum monetary wage specified in the wage determination and the contract, the former should be used for this computation, and if the fringe benefit determination does not specify any daily or weekly hours of work by which benefits should be measured, a standard 8-hour day and 40-hour week will be considered applicable. The application of these rules in typical situations is illustrated in paragraphs (c), (d), and (e) of this section.

(c) Where fringe benefits are stated as a percentage of the monetary rate, the hourly cash equivalent is determined by multiplying the stated percentage by the employee's regular or basic rate of pay. For example, if the determination calls for a 5 percent pension fund payment, and the employee is paid a monetary rate of $3.50 an hour, or if he earns $3.50 an hour on a piece-work basis in a particular workweek, the cash equivalent of that payment would be 17½ cents an hour.

(d) If the determination lists a particular fringe benefit in such terms as $25 a year, or as $2 a week, the hourly cash equivalent is determined by dividing the amount stated in the determination by the number of working hours to which the amount is attributable. For example, if a determination lists a fringe benefit as "pension—$2 a week," and does not specify weekly hours, the hourly cash equivalent is 5 cents per hour, i.e., $2 divided by 40, the number of standard working hours in a week.

(e) In determining the hourly cash equivalent of those fringe benefits which are not listed in a determination in terms of hourly cash amount, but are stated, for example, as "six paid holidays per year" or "1-week paid vacation," the employee's hourly monetary rate of pay is multipled by the number of hours making up the paid holidays or vacation. Unless the hours contemplated in the fringe benefit are specified in the determination, a standard 8-hour day and 40-hour week will be considered applicable. The total annual cost so determined will be divided by 2,080, the typical number of nonovertime hours in a year of work, to arrive at the hourly cash equivalent. To illustrate, if a particular determination lists as a fringe benefit "six paid holidays per year," and the employee's hourly rate of pay is $3.50, the $3.50 is multiplied by 48 (6 days of 8 hours each) and the result, $168.00, is then divided by 2,080 to arrive at the hourly cash equivalent, $0.0808 an hour. Similarly, where a determination requires 1-week's paid vacation during the year, a computation of this kind for a short term employee who does not receive the vacation with pay would be necessary to determine the cash equivalent payment to which he is entitled for the proprotionate part of the vacation earned during his period of employment.

[43 FR 1491, Jan. 10, 1978]

§ 4.54 Combination of equivalent fringe benefits and cash payments.

Fringe benefit obligations may be discharged by furnishing any combination of cash or fringe benefits as illustrated in §§ 4.52 and 4.53, in amounts the total of which is equivalent, under the rules there stated, to the determined fringe benefits specified in the contract.

§ 4.55 Effect of equivalents in computing overtime pay.

The Act (section 6) excludes from the regular or basic hourly rate of an employee, for purposes of determining the overtime pay to which he is entitled under any other Federal law, those fringe benefit payments computed under the Act which are excluded from the regular rate under the Fair Labor Standards Act by provisions of section 7(e) of that Act (29 U.S.C. 207(e)). Fringe benefit payments which qualify for such exclusion are described in Subpart C of Part 778 of this title. When such fringe benefits have been determined by the Secretary to be prevailing for service employees in the locality and are specified in the contract to be furnished to service employees engaged in its performance, the right to compute overtime pay in accordance with the above rule is not lost to a contractor or subcontractor because he discharges his obligation under this Act to furnish such fringe benefits through alternative equivalents as provided in this Subpart B. If he furnishes equivalent benefits or makes cash payments, or both, to such an employee as authorized herein, the amounts thereof, to the extent that they operate to discharge the employer's obligation to furnish such specified fringe benefits, may be excluded pursuant to this Act from the employee's regular or basic rate of pay in computing any overtime pay due the employee under any other Federal law. It is not necessary to consider in such a case whether such amounts would themselves be excludable under section 7(e) of the Fair Labor Standards Act. No such exclusion can operate, however, to reduce an employee's regular or basic rate of pay below the monetary wage rate specified as his minimum wage rate under section 2(a)(1) or 2(b) of this Act or under other law or by employment contract. The application of the rules set out in the regulations in this part will be considered and illustrated in the rulings and interpretations on application of this Act.

Subpart C—Application of the McNamara-O'Hara Service Contract Act

INTRODUCTORY

§ 4.101 Official rulings and interpretations in this subpart.

The purpose of this subpart is to provide, pursuant to the authority cited in § 4.104, official rulings and interpretations with respect to the application of the McNamara-O'Hara Service Contract Act for the guidance of the agencies of the United States and the District of Columbia which may enter into and administer contracts subject to its provisions, the persons desiring to enter into such contracts with these agencies, and the contractors, subcontractors, and employees who perform work under such contracts. This subpart supersedes all prior rulings and interpretations issued under the act to the extent, if any, that they may be inconsistent with rules herein stated. Principles governing the application of the act as set forth in this subpart are clarified or amplified in particular instances by illustrations and examples based on specific fact situations. Since such illustrations and examples cannot and are not intended to be exhaustive, no inference should be drawn from the fact that a subject or illustration is omitted. If doubt arises, inquiries with respect to matters other than safety and health standards should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, or to any regional office of the Wage and Hour Division. Safety and health inquiries should be addressed to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210, or to any OSHA regional office. A full description of the facts and any relevant documents should be submitted if an official ruling is desired.

[43 FR 28467, June 30, 1978]

§ 4.102 The Act.

The McNamara-O'Hara Service Contract Act of 1965 (Pub. L. 89-286, 79 Stat. 1034, 41 U.S.C. 351 et seq.), hereinafter referred to as the Act, was approved by the President on October 22, 1965 (1 Weekly Compilation of Presidential Documents 428). It establishes standards for minimum compensation and safety and health protection of employees performing work for contractors and subcontractors on service contracts entered into with the Federal Government and the District of Columbia. It applies to contracts entered into pursuant to negotiations concluded or invitations for bids issued or or after January 20, 1966. It has been amended by Pub. L. 92-473, 86 Stat. 789; by Pub. L. 93-57, 87 Stat, 140; and by Pub. L. 94-489, 90 Stat. 2358.

[42 FR 43065, Aug. 26, 1977]

§ 4.103 What the Act provides, generally.

The provisions of the Act apply to contracts, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States through the use of service employees. Under its provisions, every contract subject to the Act (and any bid specification therefor) entered into by the United States or the District of Columbia in excess of $2,500 must contain stipulations requiring (a) that specified minimum monetary wages and fringe benefits determined by the Secretary of Labor (based on wage rates and fringe benefits prevailing in the locality) be paid to service employees employed by the contractor or any subcontractor in performing the services contracted for; (b) that working conditions of such employees which are under the control of the contractor or subcontractor meet safety and health standards; and (c) that notice be given to such employees of the compensation due them under the minimum wage and fringe benefits provisions of the contract. The Act does not permit the monetary wage rates specified in such a contract to be less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act, as amended (29 U.S.C. 206(a)(1)). In addition, it is a violation of the Act for any contractor or subcontractor under a Federal contract subject to the Act, regardless of the amount of the contract, to pay any of his employees engaged in performing work on the contract less than such Fair Labor Standards Act minimum wage (or, in the case of certain linen supply contractors, the alternative minimum wage provided under sec. 6(e)(2) of such Act). Contracts of $2,500 or less are not, however, required to contain the stipulations described above. These provisions of the Service Contract Act are implemented by the regulations contained in Subparts A and B of this Part 4, and are discussed in more detail in subsequent sections of this subpart.

§ 4.104 Administration of the Act.

As provided by section 4 of the Act and under provisions of sections 4 and 5 of the Walsh-Healey Public Contracts Act (49 Stat. 2036, 41 U.S.C. 38, 39) which are made expressly applicable for the purpose, the Secretary of Labor is authorized and directed to administer and enforce the provisions of the McNamara-O'Hara Service Contract Act, to make rules and regulations, issue orders, make decisions, and take other appropriate action under the Act, including the provision of reasonable limitations and the making of such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from provisions of the Act as he may find necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business.

AGENCIES WHOSE CONTRACTS MAY BE COVERED

§ 4.107 Federal contracts.

(a) Section 2(a) of the Act covers contracts (and any bid specification therefor) "entered into by the United States" and section 2(b) applies to contracts entered into "with the Federal Government." Within the meaning of these provisions, contracts entered into by the United States and contracts with the Federal Government include generally all contracts to which any agency or instrumentality of the U.S. Government becomes a party pursuant to authority derived from the Constitution and laws of the United States. The Act does not authorize any distinction in this respect between such agencies and instrumentalities on the basis of their inclusion in or independence from the executive, legislative, or judicial branches of the Government, the fact that they may be corporate in form, or the fact that payment for the contract services is not made from appropriated funds. Thus, contracts of wholly owned Government corporations, and those of nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces, are included among those subject to the general coverage of the Act. Contracts with the Federal Government and contracts entered into "by the United States" within the meaning of the Act do not, however, include contracts for services entered into on their own behalf by agencies or instrumentalities of other Governments within the United States such as those of the several States and their political subdivisions, or of Puerto Rico, the Virgin Islands, Guam, or American Samoa.

(b) Where a Federal agency exercises its contracting authority to procure services for the Government or Government personnel, the method of procurement utilized by the contracting agency is not controlling in determining coverage of the contract as one entered into by the United States. Such contracts may be entered into by the United States either through a direct award by a Federal agency or through the exercise by another agency (whether governmental or private) of authority granted to it to procure services for or on behalf of a Federal agency. Thus, sometimes authority to enter into service contracts of the character described in the Act for and on behalf of the Government and on a cost-reimbursable basis may be delegated, for the convenience of the contracting agency, to a prime contractor with the Government under the terms of a contract having a principal purpose other than the furnishing of services through the use of service employees (as, for example, a contract to operate or manage a Federal installation or facility or a Federal program). The contracts entered into by such a prime contractor with secondary contractors for and on behalf of the Federal agency pursuant to such delegated authority, which have such services as their principal purpose, are deemed to be contracts entered into by the United States and contracts with the Federal Government within the meaning of the Act. However, service contracts entered into by Federal contractors or State or local public bodies with purveyors of services are not deemed to be entered into by the United States merely because such services are paid for with funds of the contractor or public body which have been received from the Federal Government as payment for contract work or as a grant under a Federal program. For example, a contract entered into by a municipal housing authority for tree trimming, tree removal, and landscaping for an urban renewal project financed by Federal funds is not a contract entered into by the United States and is not covered by the Service Contract Act.

§ 4.108 District of Columbia contracts.

Section 2(a) of the Act covers contracts (and any bid specification therefor) in excess of $2,500 which are "entered into by the * * * District of Columbia." The contracts of all agencies and instrumentalities which procure contract services for or on behalf of the District or under the authority of the District Government are contracts entered into by the District of Columbia within the meaning of this provision. Such contracts are also considered contracts "entered into which the Federal Government" within the meaning of section 2(b) of the Act. The legislative history indicates no intent to distinguish District of Columbia contracts from the other contracts made subject to the Act, and traditionally, under other statutes, District Government contracts have been made subject to the same labor standards provisions as contracts of other agencies and instrumentalities of the United States.

COVERED CONTRACTS GENERALLY

§ 4.110 What contracts are covered.

The Act covers service contracts of the Federal agencies described in §§ 4.107-4.108. Except as otherwise specifically provided (see §§ 4.115 et seq.), all such contracts, the principal purpose of which is to furnish services in the United States through the use of service employees, are subject to its terms. This is true of contracts entered into by such agencies with States or their political subdivisions, as well as such contracts entered into with private employers; however, contracts between a Federal or District of Columbia agency and another such agency are not within the purview of the Act. It makes no difference in the coverage of a contract whether the contract services are procured through negotiation or through advertising for bids. Also, the mere fact that an agreement is not reduced to writing does not mean that the contract is not within the coverage of the Act. The amount of the contract is not determinative of the Act's coverage, although the requirements are different for contracts in excess of $2,500 and for contracts of a lesser amount. The Act is applicable to the contract if the principal purpose of the contract is to furnish services, if such services are to be furnished in the United States, and if service employees will be used in providing such services. These elements of coverage will be discussed separately in the following sections.

§ 4.111 Contracts "to furnish services".

(a) *"Principal purpose" as criterion.* Under its terms, the Act applies to a "contract (and any bid specification therefor) * * * the principal purpose of which is to furnish services * * *" If the principal purpose is to provide something other than services of the character contemplated by the Act and any such services which may be performed are only incidental to the performance of a contract for another purpose, the Act does not apply. However, as will be seen by examining the illustrative examples of covered contracts in §§ 4.130 et seq., no hard and fast rule can be laid down as to the precise meaning of the term "principal purpose." Whether the principal purpose of a particular contract is the furnishing of services through the use of service employees is largely a question to be determined on the basis of all the facts in each particular case. Even where tangible items of substantial value are important elements of the subject matter of the contract, the facts may show that they are of secondary import to the furnishing of services in the particular case.

(b) *Determining whether a contract is for "services", generally.* Except indirectly through the definition of "service employee" the Act does not define, or limit, the types of "services" which may be contracted for under a contract "the principal purpose of which is to furnish services". As stated in the congressional committee reports on the legislation, the types of service contracts covered by its provisions are varied. Among the examples cited are contracts for laundry and dry cleaning, for transportation of the mail, for custodial, janitorial, or guard service, for packing and crating, for food service, and for miscellaneous housekeeping services. Covered contracts for services would also include those for other types of services which may be performed through the use of the various classes of service employees included in the definition in section 8(b) of the Act (see § 4.113). Examples of some such contracts are set forth in §§ 4.130 et seq. In determining questions of contract coverage, due regard must be given to the apparent legislative intent to include generally as contracts for "services" those contracts which have as their principal purpose the procurement of something other than the construction activity described in the Davis-Bacon Act or the materials, supplies, articles, and equipment described in the Walsh-Healey Act. The Committee reports in both House and Senate, and statements made on the floor of the House, took note of the labor standards protections afforded by these two Acts to employees engaged in the performance of construction and supply contracts and observed: "The service contract is now the only remaining category of Federal contracts to which no labor standards protections apply" (H.

Rept. 948, p. 1; see also S. Rept. 798, p. 1; daily Congressional Record Sept. 20, 1965, p. 23497). A similar understanding of contracts principally for "services" as embracing contracts other than those for construction or supplies is reflected in the statement of President Johnson upon signing the Act (1 Weekly Compilation of Presidential Documents, p. 428).

§ 4.112 Contracts to furnish services "in the United States."

(a) The Act covers contract services furnished "in the United States". The geographical area included in the "United States" is defined in section 8(d) as "any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Islands, Eniwetok Atoll, Kwajalein Atoll, Johnston Island and Canton Island." The definition expressly excludes any other territory under the jurisdiction of the United States (e.g. the Canal Zone) and any United States base or possession within a foreign country. Services to be performed exclusively on a vessel operating in international waters outside the geographic areas named in section 8(d) would not be services furnished "in the United States" within the meaning of the Act.

(b) A service contract to be performed in its entirety outside the geographic limits of the United States as thus defined is not covered and is not subject to the labor standards of the Act. See § 4.6(m)(8). However, if a service contract is to be performed in part within and in part without these geographic limits, the stipulations required by § 4.6 or § 4.7, as appropriate, must be included in the invitation for bids or negotiation documents and in the contract, and the labor standards must be observed with respect to that part of the contract services that is performed within these geographic limits. In such a case the requirements of the Act and of the contract clauses will not be applicable to the services furnished outside the United States.

[33 FR 9880, July 10, 1968, as amended at 42 FR 43065, Aug. 26, 1977]

§ 4.113 Contracts to furnish services "through the use of service employees".

(a) *Use of "service employees" in a contract performance.* (1) As indicated in § 4.110, the Act covers service contracts in which "service employees" will be used in performing the services which it is the purpose of the contract to procure. A service contract otherwise subject to the Act ordinarily will meet this condition if any of the services which it is the principal purpose of the contract to obtain will be furnished through the use of any service employee or employees. Even where it is contemplated that the services (of the kind performed by service employees) will be performed individually by the contractor himself, the contract cannot be considered outside the reach of the Act unless it is known in advance that the contractor will in no event use any service employee during the term of the contract in furnishing the services called for. If the contracting officer knows when advertising for bids or concluding negotiations that no such employee will be used by the contractor in any event in providing the contract services, the Act will not be deemed applicable to the contract and the contract clauses required by § 4.6 or § 4.7 may be omitted. However, in all other cases such clauses must be included in the contract documents, for application in the event service employees are used in furnishing the services. The fact that the required services will be performed by municipal employees or employees of a State would not remove the contract from the purview of the Act, as this Act does not contain any exemption for contracts performed by such employees. Also, where the services the Government wants under the contract are principally of a type that will require the use of service employees as defined in section 8(b) of the Act, the contract is not taken out of the purview of the Act by the fact that the manner in which the services of such employees are performed will be subject to the continuing overall supervision of professional personnel to whose services the Act would not be considered to apply.

(2) The coverage of the Act does not extend, however, to contracts which have as their principal purpose the procurement of a type of service in the furnishing of which no service employees will be used. A contract for medical services is an example of such a contract. So are other contracts under which the desired services called for by the Government are to be performed by bona fide executive, administrative, or professional personnel as defined in Part 541 of this title (see paragraph (b) of this section). Also, any contract for professional services which is performed essentially by professional employees, with the use of service employees being only a minor factor in the performance of the contract, is not covered by the Act. While the incidental employment of service employees will not render a contract for professional services subject to the Act, a contract which requires the use of service employees to a substantial extent would be covered even though there is some use of professional employees in performance of the contract.

(b) *"Service employees" defined.* In determining whether or not any of the contract services will be performed by service employees, the definition of "service employee" in section 8(b) of the Act is controlling. It provides:

> The term "service employee" means any person engaged in the performance of a contract entered into by the United States and not exempted under section 7, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

It will be noted that the definition expressly excludes those employees who are employed in a bona fide executive, administrative,or professional capacity as defined in Part 541 of this title and as discussed further in § 4.156. Some of the specific types of service employees who may be employed on service contracts are noted in subsequent sections which discuss the application of the Act to employees.

[33 FR 9880, July 10, 1968, as amended at 42 FR 43065, Aug. 26, 1977]

§ 4.114 Subcontracts.

(a) *Requirements applicable to subcontractors.* The Act's provisions apply to the performance not only of the contracts entered into with the United States or the District of Columbia which they cover but also to the performance of any subcontract thereunder. The Act and the regulations (§§ 4.6–4.7) require the Government prime contractor to agree that the required labor standards will be observed by his subcontractors as well as by himself, that the prescribed contract clauses relating thereto will be inserted in all subcontracts, and that appropriate sanctions provided under the Act may be invoked against him in the event of any failure to comply. Subcontractors responsible for violation of the contract stipulations are also liable for underpayments of wages which the stipulations require to be paid and are subject to the enforcement provisions of the Act. The payment by subcontractors to their employees, performing work on covered contracts with the Federal Government, of less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206(a)(1)) is expressly prohibited.

(b) *"Contractor" as including "subcontractor."* Except where otherwise noted or where the term "Government prime contractor" is used, the term "contractor" as used in this Part 4 shall be deemed to include a subcontractor. The term "contractor" as used in the contract clauses required by Subpart A in any subcontract under a covered contract shall be deemed to refer to the subcontractor, or, if in a subcontract entered into by such a subcontractor, shall be deemed to refer to the lower level subcontractor.

[33 FR 9880, July 10, 1968, as amended at 43 FR 1492, Jan. 10, 1978]

BEST DOCUMENT AVAILABLE

SPECIFIC EXCLUSIONS

§ 4.115 Exemptions and exceptions generally.

The Act, in section 7, specifically excludes from its coverage certain contracts and work which might otherwise come within its terms as procurements the principal purpose of which is to furnish services through the use of service employees. In addition, as noted in § 4.104 provision is made in section 4 of the Act for administrative action by the Secretary of Labor providing reasonable limitations and allowing reasonable variations, tolerances, and exemptions to and from provisions of the Act in accordance with standards set forth in the section. These provisions of the Act apply as explained in the following discussion. The limitations stated in this subpart in defining the scope of the statutory exemptions are reasonable limitations that have been found necessary and proper in the public interest in accordance with the provisions of section (4)b of the Act.

§ 4.116 Contracts for construction activity.

(a) *General scope of exemption.* The Act, in paragraph (1) of section 7, exempts from its provisions "any contract of the United States or District of Columbia for construction, alteration and/or repair, including painting and decorating of public buildings or public works." This language corresponds to the language used in the Davis-Bacon Act to describe its coverage (40 U.S.C. 270a). The legislative history of the McNamara-O'Hara Service Contract Act indicates that the purpose of the provision is to avoid overlapping coverage of the two acts by excluding from the application of the McNamara-O'Hara Act those contracts (and any bid specification therefor) to which the Davis-Bacon Act is applicable and in the performance of which the labor standards of that Act are intended to govern the compensation payable to the employees of contractors and subcontractors on the work. (See H. Rept. 798, pp. 2, 5, and H. Rept. 948, pp. 1, 5, also Hearing, Special Subcommittee on Labor, House Committee on Education and Labor, p. 9 (89th Cong., 1st sess.).) The intent of section 7(1) is simply to exclude from the provisions of the Act those construction contracts which involve the employment of persons whose wage rates and fringe benefits are determinable under the Davis-Bacon Act.

(b) *Contracts not within exemption.* (1) Section 7(1) does not exempt contracts which, for purposes of the Davis-Bacon Act, are not considered to be of the character described by the corresponding language in that Act, and to which the provisions of such Act are therefore not applied. Such contracts are accordingly subject to the McNamara-O'Hara Act where their principal purpose is to furnish services in the United States through the use of service employees. For example, a contract for clearing timber or brush from land or for the demolition or dismantling of buildings or other structures located thereon may be a contract for construction activity subject to the Davis-Bacon Act where it appears that the clearing of the site is to be followed by the construction of a public building or public work at the same location. If, however, no further construction activity at the site is contemplated the Davis-Bacon Act may be considered inapplicable to such clearing, demolition, or dismantling work. In such event, the exemption in section 7(1) of the McNamara-O'Hara Act has no application and the contract will be subject to the Act in accordance with its general coverage provisions.

(2) Also, where the principal purpose of a contract is to furnish services in the United States through the use of service employees whose wage rates and fringe benefits are not determinable under the Davis-Bacon Act, the fact that the contract may, by a literal reading of section 7(1), be considered to come within its exemptive language does not justify an application of the exemption where this would result in no wage determinations for these employees under either Act. This is found to be a reasonable limitation on the exemption, consistent with the rule of narrow construction of exemptions from remedial statutes and with the legislative history of this Act, which is necessary and proper in the public in-

terest, in accordance with the provisions of section 4(b) of the Act.

(3) It should be noted also that contracts in the amount of $2,000 or less and contracts to be performed in geographic areas outside the boundaries of the 50 States and the District of Columbia are not subject to the Davis-Bacon Act. Such a contract is within the general coverage provisions of the McNamara-O'Hara Act, however, if it is to be performed within the "United States" as defined in such Act and if its principal purpose is to furnish services through the use of service employees. If the contract meets these tests, it will not be deemed exempt under section 7(1) of the Act even though it calls for construction activity, since there is no suggestion in the legislative history that the Congress intended this exclusion to apply to contracts not subject to the Davis-Bacon Act or to leave employees performing such contracts outside the protection of either Act. This is found to be a reasonable limitation of the exemption which is necessary and proper in the public interest in accordance with the provisions of section 4(b) of the Act.

(c) *Partially exempt contracts.* Instances may arise in which, for the convenience of the Government, instead of awarding separate contracts for construction work subject to the Davis-Bacon Act and for services of a different type to be performed by service employees, the contracting officer may include separate specifications for each type of work in a single contract calling for the performance of both types of work. For example, a contracting agency may invite bids for the installation of a plumbing system in a public building and for the maintenance of the system for one year, under separate bid specifications. In such a case, the exemption provided by section 7(1) will be deemed applicable only to that portion of the contract which calls for construction activity subject to the Davis-Bacon Act. The contract documents are required to contain the clauses prescribed by § 4.6 for application to the contract obligation to furnish services through the use of service employees, and the provisions of the McNamara-O'Hara Act will apply to that portion of the contract. This is a reasonable limitation of the application of the exemption found to be necessary and proper in the public interest in accordance with the provisions of section 4(b) of the Act.

§ 4.117 Contracts for carriage subject to published tariff rates.

The Act, in paragraph (3) of section 7, exempts from its provisions "any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect". In order for this exemption to be applicable, the contract must be for such carriage by a common carrier described by the terms used. It does not, for example, apply to contracts for taxicab or ambulance service, because taxicab and ambulance companies are not among the common carriers specified by the statute. Also, a contract for transportation service does not come within this exemption unless the service contracted for is actually governed by published tariff rates in effect pursuant to State or Federal law for such carriage. The contracts excluded from the reach of the Act by this exemption are typically those where there is on file with the Interstate Commerce Commission or an appropriate State or local regulatory body a tariff rate applicable to the transportation involved, and the transportation contract between the Government and the carrier is evidenced by a bill of lading citing the published tariff rate. It should be noted further that only such contracts for the carriage of "freight or personnel" are exempt. This exemption thus does not exclude any contracts for the transportation of mail from the application of the Act, because the term "freight" does not include the mail. (For an administrative exemption of certain contracts with common carriers for carriage of mail, see § 4.6(m)(7).

§ 4.118 Contracts for services of communications companies.

The Act, in paragraph (4) of section 7, exempts from its provisions "any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934." This exemption is applicable to contracts with such companies for communication services regulated under the Communications Act. It does not exempt from the Act any contracts with such companies to furnish any other kinds of services through the use of service employees.

§ 4.119 Contracts for public utility services.

The Act, in paragraph (5) of section 7, exempts from its provisions "any contract for public utility services, including electric light and power, water, steam, and gas." This exemption is applicable to contracts for such services with companies whose rates therefor are regulated under State, local, or Federal law governing operations of public utility enterprises. Contracts entered into with public utility companies to furnish services through the use of service employees, other than those subject to such rate regulation, are not exempt from the Act. Among the contracts included in the exemption would be those between Federal electric power marketing agencies and investor-owned electric utilities, Rural Electrification Administration cooperatives, municipalities and State agencies engaged in the transmission and sale of electric power and energy. (See H. Rept. No. 948, 89th Cong., 1st sess., p. 4.)

§ 4.120 Contracts for operation of postal contract stations.

The Act, in paragraph (7) of section 7, exempts from its provisions "any contract with the Post Office Department, the principal purpose of which is the operation of postal contract stations." The exemption is limited to postal service contracts having the operation of such stations as their principal purpose. A provision of the legislation which would also have exempted contracts with the Post Office Department having as their principal purpose the transportation, handling, or delivery of the mails was eliminated from the bill during its consideration by the House Committee on Education and Labor (H. Rept. 948, p. 1, 89th Cong., 1st sess.).

§ 4.121 Contracts for individual services.

The Act, in paragraph (6) of section 7, exempts from its provisions "any employment contract providing for direct services to a Federal agency by an individual or individuals." This exemption, which applies only to an "employment contract" for "direct services," makes it clear that the Act's application to Federal contracts for services is intended to be limited to service contracts entered into with independent contractors. If a contract to furnish services (to be performed by a service employee as defined in the Act) provides that they will be furnished directly to the Federal agency by the individual under conditions or circumstances which will make him an employee of the agency in providing the contract service, the exemption applies and the contract will not be subject to the Act's provisions. The exemption does not exclude from the Act any contract for services of the kind performed by service employees which is entered into with an independent contractor whose individual services will be used in performing the contract, but as noted earlier in § 4.113, such a contract would be outside the general coverage of the Act if only the contractor's individual services would be furnished and no service employee would in any event be used in its performance.

§ 4.122 Work subject to requirements of Walsh-Healey Act.

The Act, in paragraph (2) of section 7, exempts from its provisions "any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036)." It will be noted that this like the similar provision in the Contract Work Hours and Safety Standards Act (40 U.S.C. 329(b)), is an exemption for "work" rather than for "contracts" subject to the Walsh-Healey Act. The purpose of the exemption was to eliminate possible overlapping of the differing labor standards of the two Acts, which otherwise might be applied to employees performing work on a contract covered by the McNamara-O'Hara Act if such contract and their work under it should also be deemed to be covered by the Walsh-Healey Act. The Walsh-Healey Act applies to contracts in excess of $10,000 for the manufacture or furnishing of materials, supplies, articles or equipment. There is no overlap of coverage, therefore, in the case of contracts in amounts not in excess of $10,000. Nor is there an overlap if the principal purpose of the contract is the manufacture or furnishing of such materials etc., rather than the furnishing of services of the character referred to in the McNamara-O'Hara Act, for such a contract is not within the general coverage of the latter Act. In such cases the exemption in section 7(2) is not pertinent. It is pertinent, however, in the case of contracts exceeding $10,000 which are covered by the McNamara-O'Hara Act, because they have as their principal purpose the furnishing of services through the use of service employees, and are also covered by the Walsh-Healey Act, because it applies to contracts in the required amount, irrespective of their principal purpose, if the furnishing of materials, supplies, articles, or equipment in a substantial amount is called for by the contract or is a significant or independent purpose of the contract. Under such contracts, the "work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act," which is exempted by section 7(2), includes only the work of those employees who are "engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment required under the contract" (41 CFR 50-201.102). Service employees engaged in such work on a contract covered by both Acts are thus exempt under section 7(2) from the provisions of the McNamara-O'Hara Act and subject only to the provisions of the Walsh-Healey Act, while other employees such as guards, watchmen, and employees performing only general office or clerical work are not covered by the Walsh-Healey Act or within this exemption, and are covered by the provisions of the McNamara-O'Hara Act when performing work on a contract subject to its terms.

[33 FR 9880, July 10, 1968, as amended at 43 FR 28467, June 30, 1978]

§ 4.123 Administrative limitations, variations, tolerances, and exemptions.

(a) *Authority of the Secretary.* The Act, in section 4(b) authorizes the Secretary to "provide such reasonable limitations" and to "make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act as he may find necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business." This authority is similar to that vested in the Secretary under section 6 of the Walsh-Healey Public Contracts Act (41 U.S.C. 40) and under section 105 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 331).

(b)(1) *Administrative action under section 4(b) of the Act.* The authority conferred on the Secretary by section 4(b) of the Act will be exercised with due regard to the remedial purpose of the statute to protect prevailing labor standards and to avoid the undercutting of such standards which could result from the award of Government work to contractors who will not observe such standards, and whose saving in labor cost therefrom enables them to offer a lower price to the Government than can be offered by the fair employers who maintain the prevailing standards. Administrative action consistent with this statutory purpose may be taken under section 4(b) with or without a request therefor, when found necessary and proper in accordance with the statutory standards. No formal procedures have been prescribed for requesting such action, except as provided in paragraph (b)(2) of this section. However, a request for exemption from the Act's provisions will be granted only upon a strong and affirmative showing that it is necessary and proper in the public interest or to avoid serious impairment of Government business. If the request for administrative action under section 4(b) is not made by the headquarters office of the contracting agency to which the contract services are to be provided, the views of such office on the matter should be obtained and submitted with the request or the contracting officer may forward such a request through channels to the agency headquarters for submission with the latter's views to the Administrator of the Wage and Hour Division, Department of Labor, whenever any wage payment issues are involved. Any request relating to an occupational safety or health issue shall be submitted to the Assistant Secretary for Occupational Safety and Health, Department of Labor.

(2) *Occupational safety and health issues.* In considering any request for a variation on any occupational safety or health issue arising under the contract clause prescribed in § 4.6(f), there shall be provided procedural safeguards equivalent to those prescribed in section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596). Pending the adoption of rules of procedure applying the aforementioned section 6(d), the applicable rules of procedure shall be specified in the notice of any hearing which may be provided.

(c) *Documentation of official action under section 4(b).* All papers and documents made a part of the official record of administrative action pursuant to section 4(b) of the Act are available for public inspection in accordance with the regulations in 29 CFR Part 70. Limitations, variations, tolerances and exemptions of general applicability and legal effect promulgated pursuant to such authority are published in the FEDERAL REGISTER and made a part of the rules incorporated in this Part 4. For convenience in use of the rules they are set forth in the sections of this part covering the subject matter to which they relate, rather than as a separate listing. (See, for example, the exemption provided in § 4.5(b) and the limitations set forth in §§ 4.115 et seq.) Any rules that are promulgated under section 4(b) of the Act relating to subject matter not dealt with elsewhere in this Part 4 will be set forth immediately following this paragraph.

[33 FR 9880, July 10, 1968, as amended at 36 FR 9864, May 29, 1971; 43 FR 28467, June 30, 1978]

PARTICULAR APPLICATIONS OF CONTRACT COVERAGE PRINCIPLES

§ 4.130 Types of covered service contracts illustrated.

The types of contracts, the principal purpose of which is to furnish services through the use of service employees, are too numerous and varied to permit an exhaustive listing. The following list is illustrative, however, of the types of services called for by such contracts that have been found to come within the coverage of the Act.

(a) Aerial spraying.

(b) Aerial reconnaissance for fire detection.

(c) Ambulance service.

(d) Cafeteria and food service.

(e) Chemical testing and analysis.

(f) Clothing alteration and repair.

(g) Custodial and janitorial services.

(h) Electronic equipment maintenance and operation.

(i) Flight training.

(j) Forest fire fighting.

(k) Geological field surveys.

(l) Grounds maintenance.

(m) Guard or watchman service.

(n) Landscaping (other than part of construction).

(o) Laundry and dry cleaning.

(p) Linen supply service.

(q) Lodging and meals.

(r) Mail hauling.

(s) Maintenance and repair of motor equipment.

(t) Maintenance and repair of office equipment.

(u) Miscellaneous housekeeping.

(v) Motor Pool operation.

(w) Packing and crating.

(x) Parking services.

(y) Snow removal.

(z) Stenographic reporting.

(aa) Support services at military installations.

(bb) Taxicab services.

(cc) Tire and tube repairs.

(dd) Transporting property or personnel (except as explained in § 4.117).

(ee) Trash and garbage removal.

(ff) Warehousing or storage.

(gg) Drafting and illustrating.

(hh) Mortuary services.

§ 4.131 Furnishing services involving more than use of labor.

(a) If the principal purpose of a contract is to furnish services in the performance of which service employees will be used, the Act will apply to the contract, in the absence of an exemption, even though the use of nonlabor items may be an important element in the furnishing of the services called for by its terms. The Act is concerned with protecting the labor standards of workers engaged in performing such contracts, and is applicable if the statutory coverage test is met, regardless of the proportion of the labor cost to the total cost of furnishing the contract services, the form in which the contract is drafted, or the necessity of providing tangible nonlabor items in performing the contract obligations. A procurement that requires tangible items to be supplied as a part of the service furnished is covered by the Act so long as the facts show that the contract is chiefly for services, and that the furnishing of tangible items is of secondary importance.

(b) Some examples of covered contracts illustrating these principles may be helpful. One such example is a contract for the maintenance and repair of typewriters. Such a contract may require the contractor to furnish typewriter parts, as the need arises, in performing the contract services. Since this does not change the principal purpose of the contract, which is to furnish the maintenance and repair services through the use of service employees, the contract remains subject to the Act.

The same is true of contracts for maintenance or repair of motor vehicles or other equipment. (As noted in § 4.122, if such contracts exceed $10,000 in amount, the Walsh-Healey Public Contracts Act may also apply to them, in which event the employees performing work required to be done in accordance with its provisions would be exempt from the application of the Service Contract Act.)

(c) Another example of the application of the above principle is a contract for the recurrent supply to a Government agency of freshly laundered items on a rental basis. It is plain from the legislative history that such a contract is typical of those intended to be covered by the Act. Although tangible items owned by the contractor are provided on a rental basis for the use of the Government, the service furnished by the contractor in making them available for such use when and where they are needed, through the use of service employees who launder and deliver them, is the principal purpose of the contract. Similarly, a contract in the form of rental of equipment with operators for the plowing and reseeding of a park area is a service contract. The Act applies to it because its principal purpose is the service of plowing and reseeding, which will be performed by service employees, although as a necessary incident the contractor is required to furnish equipment. For like reasons the contracts for aerial spraying and aerial reconnaissance listed in § 4.130 are covered, even though the use of airplanes, an expensive item of equipment, is essential in performing such services. Contracts under which the contractor agrees to provide the Government with vehicles or equipment on a rental basis with drivers or operators are similarly deemed contracts to furnish services, in the performance of which service employees will be used. (Such contracts are not considered contracts for furnishing equipment within the meaning of the Walsh-Healey Public Contracts Act.)

§ 4.132 Services and other items to be furnished under single contract.

If the principal purpose of a contract specification is to furnish services through the use of service employees within the meaning of the Act, the contract to furnish such services is not removed from the Act's coverage merely because, as a matter of convenience in procurement, it is combined in a single contract document with specifications for the procurement of different or unrelated items. For example, a contracting agency may invite bids for supplying a quantity of new typewriters and for the maintenance and repair of the typewriters already in use, under separate bid specifications. The principal purpose of the latter, but not the former, would be the furnishing of services through the use of service employees. A typewriter company might be the successful bidder on both items and the specifications for each might be included in a single contract for the convenience of the parties. In such a case, the contract obligation to furnish the maintenance and repair services would be subject to the provisions of the Act. The "principal purpose" test would be applicable to the specification for such services rather than to the combined contract. The Act would not apply in such case to the contract obligation to furnish new typewriters, although its performance would be subject to the provisions of the Walsh-Healey Public Contracts Act if the amount was in excess of $10,000.

§ 4.133 Government as beneficiary of contract services.

(a) *In general.* The Act does not say to whom the services under a covered contract must be furnished; so far as its language is concerned, it is enough if the contract is "entered into" by and with the Government and if its principal purpose is "to furnish services in the United States through the use of service employees." The legislative history indicates an intention to cover at least contracts for services of direct benefit to the Government, its property, or its civilian or military personnel for whose needs it is necessary or desirable for the Government to make provision for such services. Such contracts as those for furnishing food service and laundry and dry cleaning service for personnel at military installations, for example, were specifically referred to. Where the principal purpose of the Government contract is to provide these or other services to the Government or its personnel through the use of service employees, the contract is within the general coverage of the Act regardless of the source of the funds from which the contractor is paid for the service and irrespective of whether he performs the work in his own establishment, on a Government installation, or elsewhere. The fact that the contract permits him to provide the services directly to individual personnel as a concessionaire, rather than through the contracting agency, does not require a different conclusion.

(b) *Special situations.* It is not considered that the Act was intended to cover every contract, however, which is entered into with the Government by a contractor to furnish services, no matter how indirect or remote a benefit the Government may derive therefrom. If, for example, a contract with the Government grants the contractor the privilege of operating as a concessionaire in a Government park for the purpose of furnishing services to the public generally rather than to the Government or to personnel engaged in its business, the contract is not considered subject to the Act. Since the statute itself provides no clear line of demarcation, questions of contract coverage where doubt arises because of remoteness of benefit to the Government from the services to be furnished should be referred to the Office of Government Contract Wage Standards, for resolution.

[33 FR 9880, July 10, 1968, as amended at 36 FR 286, Jan. 8, 1971; 43 FR 28467, June 30, 1978]

§ 4.134 Contracts outside the Act's coverage.

(a) Contacts entered into by agencies others than those of the Federal Government or the District of Columbia as described in §§ 4.107-4.108 are not within the purview of the Act. Thus, the Act does not cover service contracts entered into with any agencies of Puerto Rico, the Virgin Islands, American Samoa, or Guam acting in behalf of their respective local governments. Similarly, it does cover service contracts entered into by agencies of States or local public bodies, not acting as agents or for or on behalf of the United States or the District of Columbia, even though Federal financial assistance may be provided for such contracts under Federal law or the terms and conditions specified in Federal law may govern the award and operation of the contract.

(b) Further, as already noted in §§ 4.111-4.113, the Act does not apply to Government contracts which do not have as their principal purpose the furnishing of services, or which call for no services to be furnished within the United States or through the use of service employees as those terms are defined in the Act. Clearly outside the Act's coverage for these reasons are such contracts as those for the purchase of tangible products which the Government needs (e.g. fuel, vehicles, office equipment, and supplies), for the logistic support of an air base in a foreign country, or for the services of a lawyer to examine the title to land. Similarly, where the Government contracts for a lease of building space for Government occupancy and as an incidental part of the lease agreement the building owner agrees to furnish janitorial and other building services through the use of service employees, the leasing of the space rather than the furnishing of the building services is the principal purpose of the contract, and the Act does not apply. Another type of contract which is outside the coverage of the Act because it is not for the principal purpose of furnishing services may be illustrated by a contract for the rental of parking space under which the Government agency is simply given a lease or license to use the contractor's real property. Such a contract is to be distinguished from contracts for the live storage of vehicles which are delivered into the possession or custody of the contractor, who will provide the required services including the parking or retrieval of the vehicles.

(c) There are a number of types of contracts which, while outside the Act's coverage in the usual case, may be subject to its provisions under the conditions and circumstances of a particular procurement, because these may be such as to require a different view of the principal purpose of the contract. Thus, the ordinary contract for the recapping of tires would have as its principal purpose the manufacture and furnishing of rebuilt tires for the Government rather than the furnishing of services through the use of service employees, and thus would be outside the Act's coverage. Similarly, contracts calling for printing, reproduction, and duplicating ordinarily would appear to have as their principal purpose the furnishing in quantity of printed, reproduced, or duplicated written materials rather than the furnishing of the reproduction services through the use of service employees. However, in a particular case, the terms, conditions, and circumstances of the procurement would be such that the facts would show its purpose to be chiefly the obtaining of services (e.g. repair services, typesetting, photostating, editing, etc.), and where such services would require the use of service employees the contract would be subject to the Act unless excluded therefrom for some other reason.

(d) A further category of contracts outside the coverage of the Act includes those service contracts which would otherwise be covered but to which the Act does not apply because they were entered into pursuant to negotiations concluded or invitations for bids issued before January 20, 1966 (see § 4.102) and have remained in effect without change since that date.

DETERMINING AMOUNT OF CONTRACT

§ 4.140 Significance of contract amount.

As set forth in § 4.103 and in the requirements of §§ 4.6–4.7, the obligations of a contractor with respect to labor standards differ in the case of a covered and nonexempt contract, depending on whether the contract is or is not in excess of $2,500. Rules for resolving questions that may arise as to whether a contract is or is not in excess of this figure are set forth in the following sections.

§ 4.141 General criteria for measuring amount.

(a) In general, the contract amount is measured by the consideration agreed to be paid, whether in money or other valuable consideration, in return for the obligations assumed under the contract. Thus, even though a contractor, such as a wrecker entering into a contract with the Government to raze a building on a site which will remain vacant, may not be entitled to receive any money from the Government for such work under his contract or may even agree to pay the Government in return for the right to dispose of the salvaged materials, the contract will be deemed one in excess of $2,500 if the value of the property obtained by the contractor, less anything he might pay the Government, is in excess of such amount.

(b) All bids from the same person on the same invitation for bids will constitute a single offer, and the total award to such person will determine the amount involved for purposes of the Act. Where the procurement is made without formal advertising, in arriving at the aggregate amount involved, there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising. However, where an invitation is for services in an amount in excess of $2,500 and bidders are permitted to bid on a portion of the services not amounting to more than $2,500, the amounts of the contracts awarded separately to individual and unrelated bidders will be measured by the portions of the services covered by their respective contracts.

(c) Where a contract is issued in an amount in excess of $2,500 this amount will govern for purposes of application of the Act even though penalty deductions, deductions for prompt payment, and similar deductions may reduce the amount actually expended by the Government to $2,500 or less.

§ 4.142 Contracts in an indefinite amount.

(a) Every contract subject to this Act (and any bid specification therefor) which is indefinite in amount and is not otherwise exempt from the requirements of section 2(a) of the Act and § 4.6 is required to contain the clauses prescribed in § 4.6 for contracts in excess of $2,500, unless the contracting officer has definite knowledge in advance that the contract will not exceed $2,500 in any event.

(b) Where contracts or agreements between a Government agency and prospective purveyors of services are negotiated, which provide terms and conditions under which services will be furnished through the use of service employees in response to individual purchase orders or calls, if any, which may be issued by the agency during the life of the agreement, these agreements would ordinarily constitute contracts within the intendment of the Act under principles judicially established in United Biscuit Co. v. Wirtz, 17 WH Cases 146 (C.A.D.C.), a case arising under the Walsh-Healey Public Contracts Act. Such a contract, which may be in the nature of a bilateral option contract and not obligate the Government to order any services or the contractor to furnish any, nevertheless governs any procurement of services that may be made through purchase orders or calls issued under its terms. Since the amount of the contract is indefinite, it is subject to the rule stated in paragraph (a) of this section. The amount of the contract is not determined by the amount of any individual call or purchase order.

CHANGES IN CONTRACT COVERAGE

§ 4.143 Effects of changes or extensions of contracts, generally.

Sometimes an existing service contract is modified, amended, or extended in such a manner or at such a time that, if originally entered into in its changed form at such time, the application of provisions of the Act to it would be different at such time from the application of the Act's provisions to the original contract at the time it was entered into. One example is a contract to which the Act did not originally apply because invitations for bids thereon were issued prior to January 20, 1966, which is subsequently extended. Another example is a contract which, when originally executed, was exempted from the provisions of section 2(a) of the Act and § 4.6 requiring specification in the contract of predetermined monetary wage rates and fringe benefits, because no wage determination had been made prior to the invitation for bids; and then, at a later time, contract amendments relative to the scope of the work are incorporated after prevailing wage and fringe benefit determinations have been made for classes of service employees in the locality which will be engaged in the contract work. The general rule with respect to such contracts is, that whenever changes are made in the terms of the contract, the provisions of the Act and the regulations thereunder will apply to the changed contract in the same manner and to the same extent as they would to a wholly new contract in the same terms if such a contract were entered into at the time of the change. Under this rule, the contract in the first example would become subject to the Act and regulations when the changes were effected in it, although it was not originally covered. Similarly, the specified monetary wages and fringe benefits would have to be incorporated in the amended contract in the second example, although not required in the contract originally entered into. However, contract modifications or amendments (other than contract extensions) that are unrelated to the labor requirements of a contract will not be deemed to create a new contract for purposes of the Act. In addition, only significant changes related to labor requirements will be considered as creating new contracts. This limitation on the application of the Act has been found to be a reasonable one, and necessary and proper in the public interest and to avoid serious impairment of the Conduct of Government business in accordance with the provisions of section 4(b) of the Act. Also, a contract will be deemed entered into when the term of an existing contract is extended, pursuant to an option clause or otherwise, so that the contractor furnishes services over an extended period of time, rather than being granted extra time to fulfill his original commitment.

§ 4.144 Contract modifications affecting amount.

Pursuant to the rule set forth in § 4.143, where a contract which was originally issued in an amount not in excess of $2,500 is later modified so that its amount may exceed that figure, all the provisions of section 2(a) of the Act, and the regulations thereunder are applicable from the date of modification to the date of contract completion. In the event of such modification the contracting officer will immediately insert the required contract clauses into the contract and notify the Department of Labor of such action. In the event that a contract for services subject to the Act in excess of $2,500 is modified so that it cannot exceed $2,500, compliance with the provisions of section 2(a) of the Act and the contract clauses required thereunder ceases to be an obligation of the contractor when such modification becomes effective.

§ 4.145 Extended term contracts.

Sometimes service contracts are entered into for a term of years; however, their continuation in effect is subject to the appropriation by Congress of funds for each new fiscal year. In such event, for purposes of this Act, a contract shall be deemed entered into at the beginning of each new fiscal year during which the terms of the original contract are made effective by an appropriation for the purpose. In other cases a service contract, entered into for a specified term by a Government agency, may contain a provision such as an option clause under which the agency may unilaterally extend the contract for a period of the same length or other stipulated period. If a new appropriation is required to finance such extension, the rule just stated will apply. In any event, however, since the exercise of the option results in the rendition of services for a new or different period not included in the term for which the contractor is obligated to furnish services or for which the Government is obligated to pay under the original contract in the absence of such action to extend it, the contract for the additional period is within the intendment of the Act in the same position as a wholly new contract with respect to application of the Act's provisions and the regulations thereunder.

PERIOD OF COVERAGE

§ 4.146 Contract obligations after award, generally.

A contractor's obligation to observe the provisions of the Act arises on the date he is informed that he has received the award of the contract. not necessarily the date of formal execution. However, he is required to comply with the provisions of the Act and regulations thereunder only while his employees are performing on the contract, provided his records make clear the period of such performance.

EMPLOYEES COVERED BY THE ACT

§ 4.150 Employee coverage generally.

The Act, in section 2(b), makes it clear that its provisions apply generally to all employees engaged in performing work on a covered contract entered into by the contractor with the Federal Government, regardless of whether they are his employees or those of any subcontractor under such contract. All employees who, on or after the date of award, are engaged in working on or in connection with the contract, either in performing the specific services called for by its terms or in performing other duties necessary to the performance of the contract, are thus subject to the Act unless a specific exemption (see §§ 4.115 et seq.) is applicable. All such employees must be paid wages at a rate not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206(a)(1)), as amended. Payment of a higher minimum monetary wage and the furnishing of fringe benefits may be required under the contract, pursuant to the provisions of section 2(a)(1), (2), of the Act.

[43 FR 1492, Jan. 10, 1978]

§ 4.151 Employees covered by provisions of section 2(a).

The provisions of section 2(a) of the Act prescribe labor standards requirements applicable, except as otherwise specifically provided, to every contract in excess of $2,500 which is entered into by the United States or the District of Columbia for the principal purpose of furnishing services in the United States through the use of service employees. These provisions apply to all service employees engaged in the performance of such a contract or any subcontract thereunder. The Act, in section 8(b) defines the term "service employee". The general scope of the definition is considered in § 4.113(b) of this subpart.

§ 4.152 Employees subject to prevailing compensation provisions of section 2(a)(1) and (2).

Under section 2(a)(1) and (2) of the Act minimum monetary wages and fringe benefits to be paid or furnished the various classes of service employees performing such contract work are determined by the Secretary of Labor or his authorized representative in accordance with prevailing rates and fringe benefits for such employees in the locality and are required to be specified in such contracts and subcontracts thereunder. All service employees of the classes who actually perform the specific services called for by the contract (e.g. janitors performing on a contract for office cleaning; stenographers performing on a contract for stenographic reporting) are covered by the provisions specifying such minimum monetary wages and fringe benefits for such classes of service employees.

§ 4.153 Inapplicability of prevailing compensation provisions to some employees.

There may be employees, used by a contractor or subcontractor in performing a service contract in excess of $2,500 which is subject to the Act, whose services, although necessary to the performance of the Contract, are not subject to minimum monetary wage or fringe benefit provisions contained in the contract pursuant to section 2(a). This may occur either because such employees do not come within the classes of service employees, directly engaged in performing the specified contract services, which are included in the Secretary's determinations of monetary wages and fringe benefits and for which such compensation is specified in the contract (an example might be a laundry contractor's billing clerk performing billing work with respect to the items laundered); or because the contract itself is exempted from the predetermined wage and fringe benefit requirements of section 2(a) (under the provisions of § 4.5) as a contract calling for services of classes of service employees with respect to whom there is no currently applicable wage or fringe benefit determination for the locality. In all such situations the employees, who are engaged in performing work on the contract but for whom no monetary minimum wage or fringe benefits are specified by its provisions, are nevertheless subject to the minimum wage provision of section 2(b) (see § 4.150) requiring payment of not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act to all employees working on a covered contract, unless specifically exempt. The same is true in situations where minimum monetary wages and fringe benefits have not been specified in the contract for a particular class or classes of service employees because the wage and fringe benefit determinations applicable to the locality have been made only for other classes of service employees who will perform the contract work, and not for these. However, although wages lower than the specified Fair Labor Standards Act minimum may not be paid to such employees in classes omitted from those for which monetary wages or fringe benefits were predetermined and specified in the contract, the employer will be required to pay any higher monetary wages together with fringe benefits which may be specified for them pursuant to agreement of the interested parties as provided in § 4.6(b).

§ 4.154 Employees covered by sections 2(a)(3) and (4).

The safety and health standards of section 2(a)(3) (see § 4.186) and the notice requirements of section 2(a)(4) of the Act (see § 4.183) are applicable, in the absence of a specific exemption, to every service employee engaged by a contractor or subcontractor to furnish services under a contract subject to section 2(a) of the Act.

§ 4.155 Employee coverage does not depend on form of employment contract.

The Act, in section 8(b), makes it plain that the coverage of service employees depends on whether their work for the contractor or subcontractor on a covered contract is that of a service employee as defined in section 8(b) and not on any contractual relationship that may be alleged to exist between the contractor or subcontractor and such persons.

§ 4.156 Employees in bona fide executive, administrative, or professional capacity.

The term "service employee" as defined in Section 8(b) of the Act does not include persons employed in a bona fide executive, administrative, or professional capacity as those terms are defined in 29 CFR Part 541. Employees within the definition of service employee who are employed in an executive, administrative, or professional capacity are not excluded from coverage, however, even though they are highly paid, if they fail to meet the tests set forth in 29 CFR Part 541. Thus, such employees as laboratory technicians, draftsmen, and air ambulance pilots, though they require a high level of skill to perform their duties and may meet the salary requirements of the regulations in Part 541 of this title, are ordinarily covered by the Act's provisions because they do not typically meet the other requirements of those regulations.

[42 FR 43065, Aug. 26, 1977]

COMPENSATION STANDARDS

§ 4.159 General minimum wage.

The Act, in section 2(b)(1), provides generally that no contractor or subcontractor under any Federal contract subject to the Act shall pay any of his employees engaged in performing work on such a contract less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act. Section 2(a)(1) provides that the minimum monetary wage specified in any such contract exceeding $2,500 shall in no case be lower than this Fair Labor Standards Act minimum wage. Section 2(b)(1) is a statutory provision which applies to the contractor or subcontractor without regard to whether it is incorporated in the contract; however, §§ 4.6–4.7 provide for inclusion of its requirements in covered contracts and subcontracts. Because the statutory requirement specifies no fixed monetary wage rate and refers only to the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act, and because its application does not depend on provisions of the contract, any increase in such Fair Labor Standards Act minimum wage during the life of the contract is, on its effective date, also effective to increase the minimum wage payable under section 2(b)(1) to employees engaged in performing work on the contract. The minimum wage rate under section 6(a)(1) of the Fair Labor Standards Act is $2.65 per hour beginning January 1, 1978, $2.90 per hour beginning January 1, 1979, $3.10 per hour beginning January 1, 1980, and $3.35 per hour after December 31, 1980.

[43 FR 1492, Jan. 10, 1978]

§ 4.160 Effect of section 6(e) of the Fair Labor Standards Act.

Contractors and subcontractors performing work on contracts subject to the Service Contract Act are required to pay all employees, including those employees who are not performing work on or in connection with such contracts, not less than the general minimum wage standard provided in section 6(a)(1) of the Fair Labor Standards Act, as amended (Pub. L. 95-151).

[43 FR 1492, Jan. 10, 1978]

§ 4.161 Minimum monetary wages under contracts exceeding $2,500.

The standards established pursuant to the Act for minimum monetary wages to be paid by contractors and subcontractors under service contracts in excess of $2,500 to service employees engaged in performance of the contract or subcontractors are required to be specified in the contract and in all subcontracts (see § 4.6). Section 2(a)(1) requires that every such contract (and any bid specification therefor) which is subject to the Act shall contain a "provision specifying the minimum monetary wages to be paid the various classes of service employees in the performance of the contract or any subcontract thereunder, as determined by the Secretary or his authorized representative, in accordance with prevailing rates for such employees in the locality, which in no case shall be lower than" the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. If some or all of the determined wages in a contract fall below the level of the Fair Labor Standards Act minimum by reason of a change in that rate by amendment of the law, these rates become obsolete and the employer is obligated under section 2(b)(1) of the Service Contract Act, to pay the new minimum wage rate established by the amendment as of the date it becomes effective. A change in the Fair Labor Standards Act minimum by operation of law would also have the same effect on advertised specifications or negotiations for covered service contracts, i.e., it would make ineffective and would supplant any lower rate or rates included in such specifications or negotiations whether or not determined. However, unless affected by such a change in the Fair Labor Standards Act minimum wage or by contract changes necessitating the insertion of new wage provisions (see §§ 4.143-4.145), the minimum monetary wage rate specified in the contract for each of the classes of service employees for which wage determinations have been made under section 2(a)(1) will continue to apply throughout the period of contract performance. No change in the obligation of the contractor or subcontractor with respect to minimum monetary wages will result from the mere fact that higher or lower wage rates may be determined to be prevailing for such employees in the locality after the award and before completion of the contract. Such wage determinations are effective for contracts not yet awarded, as provided in § 4.5(b).

§ 4.162 Fringe benefits under contracts exceeding $2,500.

(a) Section 2(a)(2) of the Act requires that every covered contract in excess of $2,500 shall contain "a provision specifying the fringe benefits to be furnished the various classes of service employees, engaged in the performance of the contract or any subcontract thereunder, as determined by the Secretary or his authorized representative to be prevailing for such employees in the locality. Such fringe benefits shall include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or other similar programs and other bona fide fringe benefits not otherwise required by Federal, State, or local law to be provided by the contractor or subcontractor."

(b) Under this provision, the fringe benefits, if any, which the contractor or subcontractor is required to furnish his service employees engaged in the performance of the contract are specified in the contract documents (see § 4.6). How he may satisfy this obligation is dealt with in §§ 4.170-4.171 and in Subpart B of this part. A change in the fringe benefits required by the contract provision will not result from the mere fact that other or additional fringe benefits are determined to be prevailing for such employees in the locality at a time subsequent to the award but before completion of the contract. Such fringe benefit determinations are effective for contracts not yet awarded (see § 4.5(b)), or in the event that changes in an existing contract requiring their insertion for prospective application have occurred (see §§ 4.143-4.145).

§ 4.163 Locality basis of wage and fringe benefit determinations.

Under section 2(a) of the Act, the Secretary or his authorized representative is given the authority to determine what minimum monetary wages and fringe benefits are prevailing for various classes of service employees "in the locality." The term "locality" has reference to geographic space. However, it has an elastic and variable meaning and, if the statutory purposes are to be achieved, must be viewed in the light of the existing wage structures which are pertinent to the employment by potential contractors of particular classes of service employees on the kinds of service contracts which must be considered, which are extremely varied. It is, accordingly, not possible to devise any precise single formula which would define the exact geographic limits of a "locality" that would be relevant or appropriate for the determination of prevailing wage rates and prevailing fringe benefits in all situations under the Act. The locality within which a wage or fringe benefit determination is applicable is, therefore, defined in each such determination upon the basis of all the facts and circumstances pertaining to that determination. Each such determination applies only to contracts for the locality which it includes.

§ 4.164 Making the determinations and informing contractors.

(a) *Information considered.* The minimum monetary wages and the fringe benefits set forth in determinations of the Secretary are based on information as to wage rates and fringe benefits in effect at the time the determination was made. The Department considers all pertinent information regarding prevailing wage rates and fringe benefits in the locality for the classes of service employees for which determinations are made. Such information may be derived from area surveys made by the Bureau of Labor Statistics or other Department personnel, from Government contracting officers, and from other available sources including employees and their representatives and employers and their associations. The determinations may be based on the wage rates and fringe benefits contained in union agreements where such have been determined to prevail in a locality for a specified occupational group.

(b) *Provisions for consideration of currently prevailing wage rates and fringe benefits.* (1) Determinations will be reviewed periodically and where prevailing wage rates or fringe benefits have changed, such changes will be reflected in new determinations. In a locality where it is determined that the wage rate which prevails for a particular class of service employees is the rate specified in a collective bargaining agreement or agreements applicable in that locality, and such agreement or agreements specify increases in such rates to be effective on specific dates, the prior determinations would be modified to reflect such changes when they become effective, and the revised determinations would apply to contracts entered into after the modification.

(2) The regulations, in § 4.4, provide for the filing with the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, by the awarding agency, prior to any invitation for bids or the commencement of negotiations for contracts exceeding $2,500, of a notice of intention to make a service contract which is subject to the Act. Upon receipt of the notice that Office may make a determination of minimum monetary wages and fringe benefits for the classes of service employee who will perform on the contract or may revise a determination which is currently in effect.

(c) *Informing contractors of applicable determinations.* Contractors and subcontractors on contracts subject to the Act are apprised of the Secretary's determinations applicable at the time of the award by specification in the contract of the determined wage rates and fringe benefits. (See § 4.6(b)). A determination of prevailing wages or fringe benefits made after the date of the contract award for classes of employees that will be used in performing the contract does not apply to the performance of the previously awarded contract. Prospective contractors are advised, in the invitations for bids or negotiation papers issued by the contracting agency, of the minimum monetary wages and fringe benefits required under the most recent applicable determinations of the Secretary for service employees who will perform the contract work. These requirements are, of course, the same for all bidders and none will be placed at a competitive disadvantage.

[33 FR 9880, July 10, 1968, as amended at 36 FR 287, Jan. 8, 1971; 43 FR 28467, June 30, 1978]

COMPLIANCE WITH COMPENSATION STANDARDS

§ 4.165 Wage payments and fringe benefits—in general.

(a)(1) Monetary wages specified under the Act shall be paid to the employees to whom they are due, promptly following the end of the pay period in which they are earned. No deduction, rebate, or refund is permitted, except as hereinafter stated. The same rules apply to cash payments authorized to be paid with the statutory monetary wages as equivalents of determined fringe benefits (see Subpart B of this part).

(2) The Act makes no distinction, with respect to its compensation provisions, between temporary, part-time, and full-time employees, and the wage and fringe benefit determinations apply, in the absence of an express limitation, equally to all such service employees engaged in work subject to the Act's provisions.

(b) The Act does not prescribe the length of the pay period. However, for purposes of administration of the Act, and to conform with practices required under other statutes that may be applicable to the employment, wages and hours worked must be calculated on the basis of a fixed and regularly recurring workweek of seven consecutive 24-hour workday periods, and the records must be kept on this basis. It is appropriate to use this workweek for the pay period. A biweekly, semimonthly, or monthly pay period may, however, be used if agreed upon by the employer and his employees. A pay period longer than 1 month is not recognized as appropriate for service employees and wage payments at greater intervals will not be considered as constituting proper payments in compliance with the Act.

(c) The prevailing rate established by a wage determination under the Act is a minimum rate. A contractor is not precluded from paying wage rates in excess of those determined to be prevailing in the particular locality. Nor does the Act affect or require the changing of any provisions of union contracts specifying higher monetary wages or fringe benefits than those contained in an applicable determination. However, if a determination for a class of service employees contains a wage or fringe benefit provision which is higher than that specified in an existing union agreement, the determination's provision will prevail for any work performed on a contract subject to the determination.

§ 4.166 Wage payments—unit of payment.

The standard by which monetary wage payments are measured under the Act is the wage rate per hour. An hourly wage rate is not, however, the only unit for payment of wages that may be used for employees subject to the Act. Employees may be paid on a daily, weekly, or other time basis, or by piece or task rates, so long as the measure of work and compensation used, when translated or reduced by computation to an hourly basis, will provide a rate per hour that will fulfill the statutory requirement. Whatever system of payment is used, however, must ensure that each hour of work in performance of the contract is compensated at not less than the required minimum rate. Failure to pay for certain hours at the required rate cannot be transformed into compliance with the Act by reallocating portions of payments made for other hours which are in excess of the specified minimum.

§ 4.167 Wage payments—medium of payment.

The wage payment requirements under the Act for monetary wages specified under its provisions will be satisfied by the timely payment, finally and unconditionally or "free and clear", of such wages to the employee either in cash or negotiable instrument payable at par. Scrip, tokens, credit cards, "dope checks", coupons, and similar devices which permit the employer to retain and prevent the employee from acquiring control of money due for the work until some time after the pay day for the period in which it was earned, are not proper mediums of payment under the Act. If, as is permissible, they are used as a convenient device for measuring earnings or allowable deductions during a single pay period, the employee cannot be charged with the loss or destruction of any of them and the employer may not, because the employee has not actually redeemed them, credit himself with any which remain outstanding on the pay day, in determining whether he has met the requirements of the Act. The employer may not include the cost of fringe benefits or equivalents furnished as required under section 2(a)(2) of the Act, as a credit toward the monetary wages he is required to pay under section 2(a)(1) or 2(b) of the Act (see § 4.51). However, the employer may include, as a part of the applicable minimum wage which he is required to pay under the Act, the reasonable cost or fair value, as determined by the Administrator, of furnishing an employee with "board, lodging, or other facilities," as defined in Part 531 of this title, in situations where such facilities are customarily furnished to employees and the employees' acceptance of them is voluntary and uncoerced. The determination of reasonable cost or fair value will be in accordance with the Administrator's regulations under the Fair Labor Standards Act, contained in such Part 531 of this title. While employment on contracts subject to the Act would not ordinarily involve situations in which service employees would receive tips from third persons, the treatment of tips for wage purposes in the situations where this may occur should be understood. For purposes of this Act, tips may be included in wages in accordance with the regulations under the Fair Labor Standards Act, contained in Part 531. The general rule under that Act is that the amount paid a tipped employee by his employer is deemed to be increased on account of tips by an amount determined by the employer, not in excess of 50 percent of the minimum wage applicable under section 6 of that Act, through December 31, 1978, 45 percent effective January 1, 1979 and 40 percent effective January 1, 1980. In no event shall the sum credited be in excess of the value of tips actually received by the employee. Thus, the tip credit taken by an employer subject to the Service Contract Act may not exceed $1.325 per hour beginning January 1, 1978, $1.305 per hour beginning January 1, 1980 and $1.34 per hour after December 31, 1980.

If the employer pays in full cents the $1.325 figure must be rounded down to $1.32 and the $1.305 figure to $1.30, in order that the employer will not be crediting more than the permissible percentage.

[33 FR 9880, July 10, 1968, as amended at 39 FR 14944, Apr. 29, 1974; 43 FR 1493, Jan. 10, 1978]

§ 4.168 Wage payments—deductions from wages paid.

The wage requirements of the Act will not be met where unauthorized deductions, rebates, or refunds reduce the wage payment made to the employee below the minimum amounts required under the provisions of the Act and the regulations thereunder, or where the employee fails to receive such amounts free and clear because he "kicks back" directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to him. Authorized deductions are limited to those required by law, such as taxes payable by employees required to be withheld by the employer and amounts due employees which the employer is required by court order to pay to another; deductions allowable for the reasonable cost or fair value of board, lodging, and facilities furnished as set forth in § 4.167; and deductions of amounts which are authorized to be paid to third persons for the employee's account and benefit pursuant to his voluntary assignment or order or a collective bargaining agreement with bona fide representatives of employees which is applicable to the employer. Deductions for amounts paid to third persons on the employee's account which are not so authorized or are contrary to law or from which the employer or any affiliate derives any profit or benefit directly or indirectly, may not be made if they cut into the wage required to be paid under the Act. The principles applied in determining the permissibility of deductions for payments made to third persons are explained in more detail in §§ 531.38-531.40 of this title.

§ 4.169 Wage payments—work subject to different rates.

If an employee during a workweek works in different capacities in the performance of the contract and two or more rates of compensation under section 2 of the Act are applicable to the classes of work which he performs, he must be paid the highest of such rates for all hours worked in the workweek unless it appears from the employer's records or other affirmative proof which of such hours were included in the periods spent in each class of work. The rule is the same where such an employee is employed for a portion of the workweek in work not subject to the Act, for which compensation at a lower rate would be proper if the employer by his records or other affirmative proof, segregated the worktime thus spent.

§ 4.170 Furnishing fringe benefits or equivalents.

(a) *General.* Fringe benefits specified under the Act shall be furnished, in addition to the specified monetary wages, by the contractor or subcontractor to employees engaged in performance of the contract, as provided in the determination of the Secretary or his authorized representative and prescribed in the contract documents, or, in the event that this is not possible or practicable, the obligation to furnish such benefits "may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the Secretary." (Act, section 2(a)(2).) The governing rules and regulations for furnishing such equivalents are set forth in Subpart B of this part. The various fringe benefits listed in the Act are illustrative of those which may be found to be prevailing for service employees in a particular locality. The benefits which an employer will actually be required to furnish employees performing on a specific contract will be specified in the contract documents. When an employer has not made any provisions for fringe benefits, he cannot offset an amount of monetary wages paid in excess of the wages required under the determination, in order to satisfy his fringe benefit obligations under the Act. Also, the furnishing to the employee of items the cost or value of which is creditable toward the monetary wages specified under the Act, such as board, lodging, and other facilities in the situations described in § 4.167, may not be used to offset any fringe benefits specified in the contract.

(b) *Meeting the requirements, in general.* A contractor may dispose of certain of his fringe benefit obligations, such as pension, retirement, or health insurance benefits, which may be required by an applicable determination, by irrevocably paying the required contributions for fringe benefits to a trustee or third person pursuant to an existing bona fide fund, plan, or program. Where such a plan or fund does not exist, a contractor must discharge his obligation relating to fringe benefits by furnishing either an equivalent combination of bona fide fringe benefits or by making equivalent payments in cash to the employee, as authorized by the regulations in Subpart B of this part. When a contractor or subcontractor substitutes fringe benefits not specified in the contract for fringe benefits which are so specified, the substituted fringe benefits, like those for which the contract provisions are prescribed, must be "bona fide fringe benefits." No benefit required by Federal, State, or local law is a "bona fide" fringe benefit for purposes of the Act. No contribution toward fringe benefits made by the employees themselves, or fringe benefits provided from monies withheld from the employees' wages, or benefits statutorily required of the contractor or subcontractor (such as unemployment compensation, workers' compensation, or social security) may be included in satisfying any fringe benefit requirement under the Act. Also, the furnishing of facilities which are primarily for the benefit or convenience of the employer or the cost of which is properly a business expense of the employer is not the furnishing of a "bona fide fringe benefit." This would be true of such items, for example, as tools and other materials and services incidental to the employer's performance of the contract and the carrying on of his business, and the cost of uniforms and of their laundering where the nature of the work he has contracted to perform requires the employee to wear a uniform.

[33 FR 9880, July 10, 1968, as amended at 43 FR 28467, June 30, 1978]

§ 4.171 Meeting requirements for particular fringe benefits.

(a) *Determinations specifying amount of fringe benefit.* Where a fringe benefit determination specifies the amount of the employer's contribution to provide the benefit, the amount specified is the actual amount that must be provided by the employer for the employee. Thus, if prevailing fringe benefits for insurance or retirement are determined in a stated amount, and the employer provides such benefits through contributions in a lesser amount, he will be required to furnish the employee with the difference between the amount stated in the determination and the actual cost of the benefits which he provides. Unless otherwise specified in the particular wage determination, every employee performing on a covered contract must be furnished the fringe benefits required by that determination for all hours spent working on that contract. Where a fringe benefit determination has been made requiring employer contributions for a specified fringe benefit in a stated amount per hour, a contractor employing his regular employees part of the time on contract work and part of the time on other work may credit against the hourly amount required for the hours spent on the contract work the proportionate part of a weekly, monthly, or other amount contributed by him for such fringe benefits or equivalent benefits for such employees. If, for example, the determination requires health and welfare benefits in the amount of 10 cents an hour and the employer provides hospitalization insurance for such employees at a cost of $3.50 a week, the employer may credit 8.75 cents an hour toward his fringe benefit obligation to an employee who, in a particular workweek, works 35 hours on the contract work and 5 hours on other work. He cannot, however, allocate the entire $3.50 to the 35 hours spent on contract work and take credit for 10 cents per hour in that manner.

(b) *Determinations not specifying monetary amount of fringe benefit.* (1) Where a fringe benefit determination provides for a stated number of paid holidays per year, and the contractor does not give the applicable time off for holidays occurring during the period of contract performance to temporary or casual employees, he would be required to pay such employees an equivalent amount in cash or in the form of other fringe benefits proportionate to their period of employment. The amount of such additional payment could be reduced to an hourly basis through the application of an equitable formula, as provided in § 4.53(e).

(2) Some questions have been raised about the application of provisions appearing in some fringe benefit determinations which call for "1 week paid vacation after 1 year of service with a contractor or successor." To determine when an employee meets the "after 1 year of service" test, an employer must take two factors into consideration: (i) the total length of time an employee has been in the employer's service, including both the time he has been performing on regular commercial work and the time he has been performing on the Government contract itself, and (ii) the total length of time an employee has been employed either by the present contractor or predecessor contractors in the performance of similar work on the same base. If an employee has a year of service under either the first or second consideration, he is eligible for 1 week's vacation with pay. For example, if a contractor has an employee who has worked for him for 2 years on regular commercial work and only for 6 months on a Government service contract, that employee would be eligible for the vacation since his total service with the employer adds up to more than 1 year. Similarly, if a contractor has an employee who worked for 2 years under a janitorial service contract on a particular base for two different predecessor contractors, and only 8 months with the present employer, that employee would also be considered as meeting the "after year of service" test and would thus be eligible for the specified vacation. Work performed before, as well as after, a pertinent wage determination is issued must be counted in determining an employee's length of service.

(3) Where, however, a fringe benefit determination requires 1 week's paid vacation per year after 1 year's service with an employer, no employee, temporary or permanent, with less than 1 year's service with the contractor, whether or not he was working on the contract, would qualify for this benefit.

§ 4.172 Computation of hours worked.

Since employees subject to the Act are entitled to the minimum compensation specified under its provisions for each hour worked in performance of a covered contract, a computation of their hours worked in each workweek when such work under the contract is performed is essential. Determinations of hours worked will be made in accordance with the principles applied under the Fair Labor Standards Act as set forth in Part 785 of this title. In general, the hours worked by an employee include all periods in which he is suffered or permitted to work whether or not he is required to do so, and all time during which he is required to be on duty or to be on the employer's premises or to be at a prescribed workplace. The hours worked which are subject to the compensation provisions of the Act are those in which the employee is engaged in performing work on contracts subject to the Act; however, unless such hours are adequately segregated, as indicated in § 4.173, compensation in accordance with the Act will be required for all his hours of work in any workweek in which he performs, any work in connection with the contract, because it will be presumed in the absence of affirmative proof to the contrary that such work continued throughout the workweek.

§ 4.173 Identification of contract work.

Contractors and subcontractors under contracts subject to the Act are required to comply with its compensation requirements throughout the period of performance on the contract and to do so with respect to all employees who in any workweek are engaged in performing work on such contracts. If such a contractor during any workweek is not exclusively engaged in performing such contracts, or if while so engaged he has employees who spend a portion but not all of their worktime in the workweek in performing work on such contracts, it is necessary for him to identify accurately in his records, or by other means, those periods in each such workweek when he and each such employee performed work on such contracts. In cases where contractors are not exclusively engaged in Government contract work, and there are adequate records segregating the periods in which work was performed on contracts subject to the Act from periods in which other work was performed, the compensation specified under the Act need not be paid for hours spent on non-contract work. However, in the absence of records adequately segregating non-covered work from the work performed on or in connection with the contract, all employees working in the establishment or department where such covered work is performed shall be presumed to have worked on or in connection with the contract during the period of its performance, unless affirmative proof establishing the contrary is presented. Similarly, in the absence of such records, an employee performing any work on or in connection with the contract in a workweek shall be presumed to have continued to perform such work throughout the workweek, unless affirmative proof establishing the contrary is presented. Even where a contractor can segregate Government from non-Government work, it is necessary that he comply with the requirements of section 6(e) of the FLSA discussed in § 4.160.

OVERTIME PAY OF COVERED EMPLOYEES

§ 4.180 Overtime pay—in general.

The Act does not provide for compensation of covered employees at premium rates for overtime hours of work. Section 6 recognizes however, that other Federal laws may require such compensation to be paid to employees working on or in connection with contracts subject to the Act (see § 4.181) and prescribes, for purposes of such laws, the manner in which fringe benefits furnished pursuant to the Act shall be treated in computing such overtime compensation, as follows: "In determining any overtime pay to which such service employees are entitled under any Federal law, the regular or basic hourly rate of such an employee shall not include any fringe benefit payments computed hereunder which are excluded from the regular rate under the Fair Labor Standards Act by provisions of section 7(e) thereof." Fringe benefit payments which qualify for such exclusion are described in Part 778, Subpart C of this title. The interpretations there set forth will be applied in determining the overtime pay to which covered service employees are entitled under other Federal statutes. The effect of section 6 of the Act in situations where equivalent fringe benefits or cash payments are provided in lieu of the specified fringe benefits (see § 4.170) is stated in § 4.55 of Subpart B of this part, and illustrated in § 4.182.

§ 4.181 Overtime pay provisions of other Acts.

(a) *Fair Labor Standards Act.* Although provision has not been made for insertion in Government contracts of stipulations requiring compliance with the Fair Labor Standards Act, contractors and subcontractors performing contracts subject to the McNamara-O'Hara Service Contract Act may be required to compensate their employees working on or in connection with such contracts for overtime work pursuant to the overtime pay standards of the Fair Labor Standards Act. This is true with respect to employees engaged in interstate or foreign commerce or in the production of goods for such commerce (including occupations and processes closely related and directly essential to such production) and employees employed in enterprises which are so engaged, subject to the definitions and exceptions provided in such Act. Such employees, except as otherwise specifically provided in such Act, must receive overtime compensation at a rate of not less than 1½ times their regular rate of pay for all hours worked in excess of the applicable standard in a workweek. See Part 778 of this title. However, the Fair Labor Standards Act provides no overtime pay requirements for employees, not within such interstate commerce coverage of the Act, who are subject to its minimum wage provisions only by virtue of the provisions of section 6(e), as explained in § 4.160.

(b) *Contract Work Hours and Safety Standards Act.* (1) The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332) applies generally to Government contracts, including service contracts in excess of $2,500, which may require or involve the employment of laborers and mechanics. Guards, watchmen, and many other classes of service employees are laborers or mechanics within the meaning of such Act. However, employees rendering only professional services, seamen, and as a general rule those whose work is only clerical or supervisory or nonmanual in nature, are not deemed laborers or mechanics for purposes of the Act. The wages of every laborer or mechanic for his performance of work on such contracts must include compensation at a rate not less than 1½ times his basic rate of pay for all hours worked in any workweek in excess of 40 or in excess of eight on any calendar days therein, whichever is the greater number of overtime hours. Exemptions are provided for transportation and communications contracts, contracts for the purchase of supplies ordinarily available in the open market, and work required to be done in accordance with the provisions of the Walsh-Healey Act.

(2) Regulations concerning this Act are contained in Part 5, and § 5.14(c) of this subtitle permits overtime pay to be computed in the same manner as under the Fair Labor Standards Act, subject of course to the differences in computations required by reason of the daily overtime provision of the Contract Work Hours and Safety Standards Act, which has no counterpart in the Fair Labor Standards Act.

(3) Although the application of the Contract Work Hours and Safety Standards Act does not depend on inclusion of its requirements in provisions physically made part of the contract, the regulations of the Secretary require such provisions to be set forth in contract clauses. (See § 5.5(c) of this subtitle.)

(c) *Walsh-Healey Public Contracts Act.* As pointed out in § 4.122, while some Government contracts may be subject both to the McNamara-O'Hara Service Contract Act and to the Walsh-Healey Public Contracts Act, the employees performing work on the contract which is subject to the latter Act are, when so engaged, exempt from the provisions of the former. They are, however, subject to the overtime provisions of the Walsh-Healey Act if, in any workweek, any of the work performed for the employer is subject to such Act and if, in such workweek, the total hours worked by the employee for the employer (whether wholly or only partly on such work) exceed 40 hours in the workweek or 8 hours in any day therein. In any such workweek the Walsh-Healey Act requires payment of overtime compensation at a rate not less than 1½ times the employee's basic rate for such weekly or daily overtime hours, whichever are greater in number. The overtime pay provisions of the Walsh-Healey Act are discussed in greater detail in the Rulings and Interpretations issued under such Act, copies of which are available from any office of the Wage and Hour Division, U.S. Department of Labor.

[33 FR 9880, July 10, 1968, as amended at 43 FR 28467, June 30, 1978]

§ 4.182 Overtime pay of service employees entitled to fringe benefits.

Reference is made in § 4.180 to the rules prescribed by section 6 of the Act and Subpart B of this part which permit exclusion of certain fringe benefits and equivalents provided pursuant to section 2(a)(2) of the Act from the regular or basic rate of pay when computing overtime compensation of a service employee under the provisions of any other Federal law. As provided in § 4.55 of Subpart B, not only those fringe benefits excludable under section 6 as benefits determined and specified under section 2(a)(2), but also equivalent fringe benefits and cash payments authorized under Subpart B to be furnished in lieu of the specified benefits may be excluded from the regular or basic rate of such an employee. The application of this rule may be illustrated by the following examples:

(a) The A company pays a service employee $4.50 an hour in cash under a wage determination which requires a monetary rate of not less than $4 and a fringe benefit contribution of 50 cents which would qualify for exclusion from the regular rate under section 7(e) of the Fair Labor Standards Act. The contractor pays the 50 cents in cash because he made no contributions for fringe benefits specified in the determination and the contract. Overtime compensation in this case would be computed on a regular or basic rate of $4 an hour.

(b) The B company has for some time been paying $4.25 an hour to a service employee as his basic cash wage plus 25 cents an hour as a contribution to a welfare and pension plan, which contribution qualifies for exclusion from the regular rate under the Fair Labor Standards Act. For performance of work under a contract subject to the Act a monetary rate of $4 and a fringe benefit contribution of 50 cents (also qualifying for such exclusion) are specified because found to be prevailing for such employees in the locality. The contractor may credit his 25-cent welfare and pension contribution toward the discharge of his fringe benefit obligation under the contract and make an additional contribution of 25 cents for the specified or equivalent fringe benefits or pay the employee an additional 25 cents in cash as authorized in Subpart B of this part. These contributions or equivalent payments may be excluded from the employee's regular rate which remains $4.25, the rate agreed upon as the basic cash wage.

(c) The C company has been paying $4 an hour as its basic cash wage on which the firm has been computing overtime compensation. For performance of work on a contract subject to the Act the same rate of monetary wages and a fringe benefit contribution of 50 cents an hour (qualifying for exclusion from the regular rate under the Fair Labor Standards Act) are specified in accordance with a determination that these are the monetary wages and fringe benefits prevailing for such employees in the locality. The contractor is required to continue to pay at least $4 an hour in monetary wages and at least this amount must be included in the employee's regular or basic rate for overtime purposes under applicable Federal law. His fringe benefit obligation under the contract would be discharged if 50 cents of the contributions for fringe benefits were for the fringe benefits specified in the contract or equivalent benefits as defined in Subpart B of this part. He may exclude such fringe benefit contributions from the regular or basic rate of pay of the service employee in computing overtime pay due. Exclusion of the remainder of the fringe benefit contributions from the regular rate under the Fair Labor Standards Act would depend on whether they are contributions excludable under section 7(e) of that Act.

[43 FR 1493, Jan. 10, 1978]

NOTICE TO EMPLOYEES

§ 4.183 Employees must be notified of compensation required.

The Act, in section 2(a)(4), and the regulations thereunder in § 4.6(e), require all contracts subject to the Act which are in excess of $2,500 to contain a clause requiring the contractor or subcontractor to notify each employee commencing work on a contract to which the Act applies of the compensation required to be paid such employee under section 2(a)(1) and the fringe benefits required to be furnished under section 2(a)(2). A notice form provided by the Wage and Hour Division is to be used for this purpose. It may be delivered to the employee or posted as stated in § 4.184.

§ 4.184 Posting of notice.

Posting of the notice provided by the Wage and Hour Division shall be in a prominent and accessible place at the worksite, as required by § 4.6(e). The display of the notice in a place where it may be seen by employees performing on the contract will satisfy the requirement that it be in a "prominent and accessible place". Should display be necessary at more than one site, in order to assure that it is seen by such employees, additional copies of the poster may be obtained without cost from the Division. The contractor or subcontractor is required to attach to the poster a listing of all minimum monetary wages and fringe benefits, as specified in the contract, to be paid or furnished to the classes of service employees performing on the contract.

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RECORDS

§ 4.185 Recordkeeping requirements.

The records which a contractor or subcontractor is required to keep concerning employment of employees subject to the Act are specified in § 4.6(g) of Subpart A of this part. They are required to be maintained for 3 years from the completion of the work, and must be made available for inspection and transcription by authorized representatives of the Administrator. Such records must be kept for each service employee performing work under the contract, for each workweek during the performance of the contract. If the required records are not separately kept for the service employees performing on the contract, it will be presumed, in the absence of affirmative proof to the contrary, that all service employees in the department or establishment where the contract was performed were engaged in covered work during the period of performance. (See § 4.173.)

SAFETY AND HEALTH PROVISIONS

§ 4.186 Contract requirements for safety and health of workers.

The Act, in section 2(a)(3), requires every service contract in excess of $2,500 subject to its provisions to contain a stipulation that "no part of the services covered by this Act will be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or any subcontractor which are unsanitary or hazardous or dangerous to the health or safety of a service employee engaged to furnish the services". Regulations under this provision are set forth in Part 1925 of this title.

ENFORCEMENT

§ 4.187 Recovery of underpayments.

(a) The Act, in section 3(a) provides that any violation of any of the contract stipulations required by section 2(a)(1) or (2) or of section 2(b) of this Act shall render the party responsible therefor liable for a sum equal to the amount of any deductions, rebates, refunds, or underpayments of compensation due to any employee engaged in the performance of such contract. So much of the accrued payment due on the contract or any other contract between the same contractor and the Federal Government may be withheld as is necessary to pay such employees. Such withheld sums shall be held in a deposit fund. On order of the Secretary, any compensation which the head of the Federal agency or the Secretary has found to be due pursuant to this Act shall be paid directly to the underpaid employees from any accrued payments withheld under this Act.

(b) The Act, in section 5(b), provides that, if the accrued payments withheld under the terms of the contract are insufficient to reimburse all service employees with respect to whom there has been a failure to pay the compensation required pursuant to this Act, the United States may bring action against the contractor, subcontractor, or any sureties in any court of competent jurisdiction to recover the remaining amount of underpayments. Any sums thus recovered by the United States shall be held in the deposit fund and shall be paid, on the order of the Secretary, directly to the underpaid employee or employees. Any sum not paid to an employee because of inability to do so within 3 years shall be covered into the Treasury of the United States as miscellaneous receipts.

§ 4.188 Ineligibility for further contracts when violations occur.

Section 5 of the Act directs the Comptroller General to distribute a list to all agencies of the Government giving the names of persons or firms that the Federal agencies or the Secretary have found violated this Act. Unless the Secretary otherwise recommends, no contract of the United States shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest until 3 years have elapsed from the date of publication of the list containing the name of such persons or firms. This prohibition against the award of a contract to an ineligible contractor applies to him in the capacity of either a prime contractor or a subcontractor.

§ 4.189 Administrative proceedings relating to enforcement of labor standards.

The Secretary is authorized, pursuant to the provisions of section 4(a) of the Act, to hold hearings and make such decisions based upon findings of fact as are deemed to be necessary to enforce the provisions of the Act. The Secretary's findings of fact after notice and hearing are declared to be conclusive upon all agencies of the United States and, if supported by a preponderance of the evidence, conclusive in any court of the United States. Rules of practice for administrative proceedings under this authority are set forth in Part 6 of this subtitle.

§ 4.190 Contract cancellation.

As provided in section 3 of the Act, when a violation is found of any contract stipulation, the contract is subject upon written notice to cancellation by the contracting agency. Whereupon, the United States may enter into other contracts or arrangements for the completion of the original contract, charging any additional cost to the original contractor.

§ 4.191 Complaints and compliance assistance.

(a) Any employer, employee, labor or trade organization, or other interested person or organization may report to any office of the Wage and Hour Division (or to any office of the Occupational Safety and Health Administration, in instances involving the safety and health provisions), a violation, or apparent violation of the act, or of any of the rules or regulations prescribed thereunder. Such offices are also available to assist or provide information to contractors or subcontractors desiring to insure that their practices are in compliance with the act. Information furnished is treated confidentially.

(b) A report of breach or violation relating solely to safety and health requirements may be in writing and addressed to the Regional Administrator of an Occupational Safety and Health Administration Regional Office, U.S. Department of Labor, or to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

(c) Any other report of breach or violation may be in writing and addressed to the Assistant Regional Administrator of a Wage and Hour Division's regional office, U.S. Department of Labor, or to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210.

(d) In the event that an Assistant Regional Administrator for the Wage and Hour Division, Employment Standards Administration, is notified of a breach or violation which also involves safety and health standards, the Regional Administrator of the Employment Standards Administration shall notify the appropriate Regional Administrator of the Occupational Safety and Health Administration who shall with respect to the safety and health violation take action commensurate with his responsibilities pertaining to safety and health standards.

(e) The report should contain the following:

(1) The full name and address of the person or organization reporting the breach or violations.

(2) The full name and address of the person against whom the report is made.

(3) A clear and concise statement of the facts constituting the alleged breach or violation of any of the provisions of the McNamara-O'Hara Service Contract Act, or of any of the rules or regulations prescribed thereunder.

[33 FR 9880, July 10, 1968, as amended at 43 FR 28467, June 30, 1978]

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

Subpart A—General

Sec.
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5.26 "* * * contribution irrevocably made * * * to a trustee or to a third person".
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5.30 Types of wage determinations.
5.31 Meeting wage determination obligations.
5.32 Overtime payments.

AUTHORITY: Reorg. Plan No. 14 of 1950, 64 Stat. 1267; sec. 2, 48 Stat. 948; sec. 10, 61 Stat. 89; 5 U.S.C. 301, 133z-15 note, 29 U.S.C. 258; 40 U.S.C. 276c, unless otherwise noted.

Subpart A—General

EFFECTIVE DATE NOTE: At 47 FR 23665, May 28, 1982, Subpart A was revised effective July 27, 1982. At 47 FR 32070, July 26, 1982, the effective date was suspended indefinitely. The existing text of Subpart A remains in effect. For the convenience of the user, the suspended text follows Subpart A.

In order to determine the effective text at any date after the revision date of this volume (July 1, 1982), the user must consult the daily FEDERAL REGISTER.

§ 5.0 Suspension of certain provisions of this part and revocation of the suspension.

(a) Effective February 23, 1971, and until otherwise provided, certain of the provisions of this part, as set forth in paragraph (c) of this section, were suspended pursuant to Proclamation 4031 (36 FR 3457) promulgated by the President on February 23, 1971, under the authority provided in section 6 of the Davis-Bacon Act (40 U.S.C. 276a-5).

(b) Proclamation 4031 suspended, as to all contracts entered into on or subsequent to February 23, 1971, and until otherwise provided—

(1) The provisions of the Davis-Bacon Act of March 31, 1931, as amended, and the provisions of all other acts providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act; and

(2) The provisions of any Executive order, proclamation, rule, regulation, or other directive providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act.

(c) Except with respect to contracts entered into prior to February 23, 1971, the following provisions of this

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part were suspended, effective on such date and until otherwise provided, pursuant to Proclamation 4031 as set forth in paragraphs (a) and (b) of this section:

(1) The provisions of §§ 5.3 and 5.4, in their entirety;

(2) The provisions of paragraph (a) of § 5, insofar as they prescribe the inclusion in contracts of clauses set forth in paragraphs (c)(1) through (4) of such section or authorized modifications thereof;

(3) The provisions of paragraphs (c) (6) and (7) of § 5.5(a), insofar as they require the inclusion in contracts and subcontracts of references to the clauses prescribed by paragraphs (c) (1) through (4) of § 5.5(a); and

(4) The provisions of §§ 5.6 and 5.7.

(d) The suspension referred to in paragraphs (a) and (b) of this section did not apply to:

(1) The provisions of § 5.5(c); or to

(2) The application of any provisions of this part to contracts entered into prior to February 23, 1971. With respect to contracts entered into prior to such date all provisions of this part, as modified in accordance with the guidelines, orders, and organizational description published in the FEDERAL REGISTER of Friday, January 8, 1971 (36 FR 304-308) remain in effect.

(e) The suspension of the provisions of this part referred to in paragraphs (a) and (c) of this section is now revoked pursuant to Proclamation No. 4040 of the President dated March 29, 1971, which revoked Proclamation No. 4031 of February 23, 1971, as to all construction contracts, whether for direct Federal construction or federally assisted construction, for which solicitations for bids or proposals are issued after March 29, 1971, the date of Proclamation No. 4040. Attention is directed to the fact that this revocation does not affect the validity of contracts entered into after February 23, 1971, without Davis-Bacon rates pursuant to authority of Proclamation No. 4031, including contracts let after March 29, 1971, pursuant to solicitations for bids or proposals issued on or before March 29, 1971.

(Proclamation No. 4040, 40 U.S.C. 276a-5)

[36 FR 6427, Apr. 3, 1971]

§ 5.1 Purpose and scope.

(a) The regulations contained in this part are promulgated in order to coordinate the administration and enforcement of the labor standards provisions of each of the following acts by the Federal agencies responsible for their administration and such additional statutes as may from time to time confer upon the Secretary of Labor additional duties and responsibilities similar to those conferred upon him under Reorganization Plan No. 14 of 1950:

1. The Davis-Bacon Act (sec. 1-7, 46 Stat. 1494, as amended; Pub. L. 74-403, 40 U.S.C. 276a-276a-7).
2. Copeland Act (40 U.S.C. 276c).
3. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330).
4. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).
5. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).
6. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86-372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).
7. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).
8. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).
9. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).
10. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).
11. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91-230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92-318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.
12. The Federal-Aid Highway Act of 1956 (sec. 108(b), 70 Stat. 378, recodified at 72 Stat. 895; 23 U.S.C. 113(a), as amended), see particularly the amendments in the Federal-Aid Highway Act of 1968 (Pub. L. 90-495, 62 Stat. 815).
13. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).

14. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).

15. Rehabilitation Act of 1973 (sec. 306(b)(5), 87 Stat. 384, 29 U.S.C. 776(b)(5).

16. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 88 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).

17. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).

18. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).

19. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

20. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).

21. National Visitors Center Facilities Act of 1968 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).

22. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).

23. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2) thereof, 88 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

24. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

25. Health Professions Educational Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2256, 42 U.S.C. 293a(c)(7)).

26. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 364; 42 U.S.C. 296a(b)(5)).

27. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

28. Safe Drinking Water Act (sec. 2(a), see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j-9(e)).

29. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o-3(b)(1)(H)).

30. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

31. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

32. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

33. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

34. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c-3).

35. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

36. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

37. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

38. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

39. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

40. Older Americans Act of 1965 (sec. 502, Pub. L. 89-73, as amended by sec. 501, Pub. L. 93-29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

41. Public Works and Economic Development Act of 1965 (sec. 712; 79 Stat. 575 as amended; 42 U.S.C. 3222).

42. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

43. New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).

44. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

45. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

46. Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

47. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

48. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

49. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

50. Solid Waste Disposal Act (sec. 2, 90 Stat. 2828; 42 U.S.C. 6979).

51. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

52. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

53. Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

54. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

55. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281i).

56. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 644; 40 U.S.C. 682(b)(4). NOTE.—Repealed December 9, 1969, and labor standards incorporated in

sec. 1-1431 of the District of Columbia Code).

57. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89-694, but not in the United States Code).

58. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L 87-328) (considered a statute for purposes of the plan but not in the United States Code)

(b) Sections 1.5 and 1.7 of this subtitle contain the Department's procedural rules governing requests for wage determinations under the Davis-Bacon Act and its related statutes listed in § 1.1 of this subtitle and the use of such wage determinations.

[29 FR 99, Jan. 4, 1964, as amended at 30 FR 13136, Oct. 15, 1965; 40 FR 30481, July 21, 1975; 43 FR 32131, July 25, 1978]

§ 5.2 Definitions.

As used in this part:

(a) The term "Agency Head" means the principal official of the Federal Agency and includes those persons duly authorized to act in his behalf;

(b) The term "Contracting Officer" means the individual, his duly appointed successor, or his authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency, or other administering agency;

(c) The terms apprentice and trainee are defined as follows:

(1) "Apprentice" means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training as meeting its standards for on-the-job training programs and which has been so certified by that Bureau.

(d) The term "wage determination" includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision, issued prior to the award of the construction contract, except that under the National Housing Act changes in the decision shall be effective if made at any time prior to the beginning of construction. The use of the wage determination shall be subject to the provisions of § 1.7 of this title.

(e) The term "contract" means any contract within the scope of the labor standards provisions of any of the acts listed in § 5.1 and which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution, except where a different meaning is expressly indicated;

(f) The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a "building" or "work" within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(g) The terms "construction", "prosecution", "completion", or "repair" mean all types of work done on a particular building or work at the site thereof or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project, including without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project, by persons employed by the contractor or subcontractor. A mere token beginning of the work shall not be deemed to be the "beginning of construction" as that term is used in the National Housing Act.

(h) The term "public building" or "public work" includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency. However, the term "initial construction" in the Federal-Aid Highway Act of 1956 does not include repair or maintenance work.

(i) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States, is "employed" and receiving "wages", regardless of any contractual relationship alleged to exist.

(j) The term "Federal agency" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

(k) The term "wages" (and its singular form) has the meaning prescribed in section 1(b) of the Davis-Bacon Act.

[29 FR 99, Jan. 4, 1964, as amended at 29 FR 13463, Sept. 30, 1964; 40 FR 30481, July 21, 1975; 41 FR 10063, Mar. 9, 1976]

§§ 5.3–5.4 [Reserved]

§ 5.5 Contract provisions and related matters.

(a) The Agency Head shall cause or require to be inserted in full in any contract subject to the labor standards provisions of any of the acts listed in § 5.1, except those subject only to the Contract Work Hours and Safety Standards Act, the following clauses or any modifications thereof to meet the particular needs of the agency if first approved by the Department of Labor:

(1) *Minimum wages.* (i) All mechanics and laborers employed or working upon the site of the work, or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist be-

tween the contractor and such laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv). Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particularly weekly period, are deemed to be constructively made or incurred during such weekly period.

(ii) The contracting officer shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination and a report of the action taken shall be sent by the Federal agency to the Secretary of Labor. In the event the interested parties cannot agree on the proper classifications or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question accompanied by the recommendation of the contracting officer shall be referred to the Secretary for final determination.

(iii) The contracting officer shall require, whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for determinations.

(iv) If the contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract: *Provided, however,* The Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding.* The (write in name of Federal agency) may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees, employed by the contractor or any subcontractor on the work the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice or trainee, employed or working on the site of the work or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work, or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project. Such records will contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the

Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(ii) The contractor will submit weekly a copy of all payrolls to the (write in name of appropriate Federal agency) if the agency is a party to the contract, but if the agency is not such a party the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "Weekly Statement of Compliance" which is required under this contract and the Copeland regulations of the Secretary of Labor (29 CFR, Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under 29 CFR 5.5(a)(1)(iv) shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the (write the name of agency) and the Department of Labor, and will permit such representatives to interview employees during working hours on the job. Contractors employing apprentices or trainees under approved programs shall include a notation on the first weekly certified payrolls submitted to the contracting agencies that their employment is pursuant to an approved program and shall identify the program.

(4) *Apprentices and trainees*—(i) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subdivision (ii) of this subparagraph or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate con-

tained in the applicable wage determination.

(ii) *Trainees.* Except as provided in 29 CFR 5.15 trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) *Compliance with Copeland Regulations* (29 CFR Part 3). The contractor shall comply with the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor which are herein incorporated by reference.

(6) *Subcontracts.* The contractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (5) and (7) and such other clauses as the (write in the name of Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

(7) *Contract termination; debarment.* A breach of clauses (1) through (6) may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.

(b)(1) In the construction of a dwelling or dwellings insured under 12 U.S.C. 1715v, or 1715w, compliance with the requirements of paragraph (a) of this section may be waived by the Agency Head in cases or classes of cases where laborers or mechanics, not otherwise employed at any time on the project, voluntarily donate their services without full compensation for the purpose of lowering the cost of construction and the Agency Head determines that any amounts saved thereby are fully credited to the nonprofit corporation, association, or other organization undertaking the construction.

(2) In construction assisted by any loan or grant under 20 U.S.C. Ch. 21, the Agency Head may waive the application of 20 U.S.C. 753(a) in cases or classes of cases where laborers or mechanics not otherwise employed at any time in the construction of the project, voluntarily donate their services for the purpose of lowering the costs of construction and the Agency Head determines that any amounts saved thereby are fully credited to the educational institution undertaking the construction.

(3) In construction assisted under Section 503 of the Housing Act of 1964, the Agency Head may waive the application of the prevailing wage standards prescribed therein in cases or classes of cases where laborers or mechanics, not otherwise employed at any time on the project, voluntarily donate their services without compensation for the purpose of lowering the costs of construction and the Agency Head determines that any amounts

thereby saved are fully credited to the person, corporation, association, organization, or other entity undertaking the project.

(c) The Agency Head shall cause or require the following clauses set forth in paragraphs (c) (1), (2), (3) and (4) of this section to be included in full in any contract subject to the Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, as the case may be.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in subparagraph (1), the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth in subparagraph (1), in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1).

(3) *Withholding for unpaid wages and liquidated damages.* The (write in the name of the Federal agency) may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2).

(4) *Subcontracts.* The contractor shall insert in any subcontracts the clauses set forth in subparagraphs (1), (2), and (3) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

(d) In any contract required to contain the withholding clause set forth in paragraph (a)(2) of this section, the Federal Agency may modify the clause in paragraph (c)(3) of this section so as to refer only to the withholding and determination of sums for liquidated damages.

(e) In any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require to be inserted a clause requiring the maintenance of records containing the information specified in § 516.2(a) of this title. Records containing such information shall be preserved for a period of three years from the completion of the contract. Further, the Agency Head shall cause or require to be inserted in any such contract a clause providing that the records to be maintained under this paragraph shall be available for inspection in the manner that inspection of records is available under the terms of paragraph (a)(3)(ii) of this section.

(f) In contracts subject to section 803 of the National Housing Act, the Agency Head shall cause or require inclusion of the following clause: Every laborer and mechanic employed by the contractor or any subcontractor engaged in the construction of the project, shall receive compensation at a rate of not less than one and one-half times his basic or regular rate of pay for all hours worked in any workweek in excess of eight hours in any workday or forty hours in the workweek, as the case may be.

OMB CONTROL No. 1215-0017, paragraph 5.5(a)(3). (47 FR 145, Jan. 5, 1982)

[29 FR 100, Jan. 4, 1964, as amended at 29 FR 13463, Sept. 30, 1964; 30 FR 13136, Oct. 15, 1965; 36 FR 19304, Oct. 2, 1971; 40 FR 30481, July 21, 1975; 41 FR 10063, Mar. 9, 1976; 47 FR 145, Jan. 5, 1982]

§ 5.6 Enforcement.

(a)(1) It shall be the responsibility of the Federal agency to ascertain whether the clauses required by § 5.5 have been inserted in the contracts. Agencies which do not directly enter into such contracts shall promulgate the necessary regulations or procedures to require that the contracts contain the provisions of § 5.5 or such modifications thereof which have been approved by the Department of Labor. No payment, advance, grant, loan or guarantee of funds shall be approved by the Federal agency after the beginning of construction unless there is on file with the agency a certification by the contractor that he and his subcontractors have complied or that there is a substantial dispute with respect to the required provisions.

(2) The Federal agency shall make such examination of the submitted payrolls and statements as may be necessary to assure compliance with the labor standards clauses required by the regulations contained in this part and the applicable statutes listed in § 5.1. In connection with such examination particular attention should be given to the correctness of classifications and disproportionate employment of laborers, helpers, apprentices or trainees. Such payrolls and statements shall be preserved by the agency for a period of 3 years from the date of completion of the contract and shall be produced at the request of the Secretary of Labor at any time during the 3-year period.

(3) In addition to the examination of payrolls and statements required by paragraph (a)(2) of this section, the Federal agency shall cause the investigations to be made as may be necessary to assure compliance with the labor standards clauses required by the regulations contained in this part and the applicable statutes listed in § 5.1. Projects where the contract is of short duration (6 months or less) shall be investigated before the work is accepted, if feasible. In the case of contracts which extend over a long period of time the investigation shall be made with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans to determine the correctness of classifications and disproportionate employment of laborers, helpers, apprentices or trainees. Complaints of alleged violations shall be given priority. It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a confidential written or oral statement as a complaint or in the course of an investigation, as well as proportions of the statement which would reveal his identity, will not be disclosed without the prior consent of the employee. Disclosure of employee statements shall be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see 29 CFR Part 70) and the "Privacy Act of 1974" (5 U.S.C. 552a).

(b)(1) Whenever any contractor or subcontractor is found by the Secretary of Labor or the Agency Head with the concurrence of the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in § 5.1, other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided below) to receive any contracts subject to any of the statutes listed in § 5.1. *Provided,* *however,* That the Administrator of the Wage and Hour Division shall direct the removal from the debarred bidders list of any contractor or subcontractor whom he has found to have demonstrated a current responsibility to comply with the labor standards provisions applicable to Federal contracts and federally assisted construction work subject to any of the applicable statutes listed in § 5.1. In cases arising under contracts covered by the Davis-Bacon Act, the ineligibility provision prescribed in that act shall govern.

(2) The Agency Head shall furnish to the Secretary of Labor for transmittal to the Comptroller General the names of the persons or firms who have been found to have disregarded their obligations to employees. The Comptroller General will distribute a list to all Departments of the Government giving the names of such ineligible persons or firms.

(c)(1) Whenever as a result of an investigation conducted by the Agency or the Department of Labor, the Deputy Administrator of the Wage and Hour Division, Department of Labor, finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of the labor standards provisions of any of the statutes listed in § 5.1 (other than the Davis-Bacon Act), or has committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees or subcontractors under section 3(a) thereof, he shall promptly notify by registered or certified mail the contractor or subcontractor and its responsible officers, if any (and any firms in which the contractor or subcontractor are known to have a substantial interest), of the finding and afford such contractor or subcontractor and any other parties notified an opportunity to present such reasons or considerations as they have to offer relating to why debarment action should not be taken under paragraph (b) of this section or section 3(a) of the Davis-Bacon Act. The Deputy Administrator shall furnish to those notified a summary of the investigative findings, and shall make available to them any information disclosed by the investigation which is not privileged or found confidential for good cause. If this opportunity is requested, an informal proceeding shall be held before an administrative law judge, an Assistant Regional Director for Employment Standards, or any other departmental officer of appropriate ability. At the conclusion of the informal proceeding, the presiding officer shall issue his decision which shall be served by registered or certified mail upon the interested parties.

(2) Within 30 days after service of the decision, any interested party may file objections to the decision with the Administrator, Wage and Hour Division, United States Department of Labor, Washington, D.C. 20210. Such objections shall be specific, and shall be accompanied by reasons or bases therefor. In his discretion, the Administrator may permit oral argument. If no objections are filed, the decisions of the presiding officer shall be final, except in cases under section 3 of the Davis-Bacon Act as to any action to be taken by the Comptroller General under that section.

(3) The decision of the Administrator shall show a ruling upon each objection presented, and shall include a statement of (i) the findings and conclusions, as well as the reasons or bases therefor, upon all material issues of fact, law, or discretion presented on the record, and (ii) an appropriate order or recommendation. The decision of the Administrator shall be final, except in cases accepted for review, upon petition, by the Wage Appeals Board and in cases under section 3 of the Davis-Bacon Act as to any action to be taken by the Comptroller General under that section.

(d) Any person or firm debarred under § 5.6(b) may in writing request removal from the debarment list. The procedure for removal shall be substantially similar to the debarment procedure set forth in paragraph (c) of this section. That is, the person or firm shall have an opportunity to demonstrate in an informal proceeding a current responsibility to comply with the labor standards provisions applicable to Federal contracts and to federally assisted construction work and to file objections to the presiding officer's decision for consideration by the Administrator.

(Secs. 104, 105, 76 Stat. 358, 359; 40 U.S.C. 330, 331)

[29 FR 102, Jan. 4, 1964, as amended at 40 FR 30481, July 21, 1975]

§ 5.7 Reports to the Secretary of Labor.

(a) *Enforcement reports.* (1) Where underpayments total less than $500 and are nonwillful, and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations, except where the Department of Labor has expressly requested that the investigation be made. In the latter case, the investigating agency shall submit a factual summary report including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed, corrective measures taken (such as "letters of notice"), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under § 5.8.

(2) Where underpayments total $500 or more, or are willful, the Federal agency shall furnish to the Department of Labor, as soon as practicable, a detailed enforcement report. The report should be prepared in accordance with the "Investigation and Enforcement Manual" published by the Department of Labor with respect to "Labor Standards Provisions Applicable to Contracts Covering Federally-Financed and Assisted Construction". In cases involving underpayments under the Davis-Bacon Act, the report should meet the reporting requirements contained in Comptroller General's Letter B-3368, dated March 19, 1957.

(b) *Semi-annual enforcement reports.* To assist the Secretary in fulfilling his responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies shall furnish to the Secretary by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in circular memoranda of the Secretary.

(c) *Additional information.* Upon request, the Agency Head shall transmit to the Secretary of Labor such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Secretary may find necessary for the performance of his duties with respect to the labor standards provisions referred to in this part.

(d) *Contract termination.* Where the contract is terminated by reason of violations of the labor standards, a report shall be submitted to the Secretary of Labor and the Comptroller General giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of his contract, and the description of the work he is to perform.

[29 FR 102, Jan. 4, 1964, as amended at 30 FR 13136, Oct. 15, 1965; 42 FR 54803, Oct. 11, 1977]

§ 5.8 Review of recommendations for an appropriate adjustment in liquidated damages under the Contract Work Hours and Safety Standards Act.

(a) *Findings and recommendations by the head of the Agency.* Whenever the head of an agency finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act and to be in excess of $100.00, is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, he may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages necessarily include findings with respect to any wage underpayments for which the liquidated damages are determined.

(b) The recommendations of the head of an agency submitted to the Department of Labor under paragraph (a) of this section shall be reviewed initially by the Deputy Administrator of the Wage and Hour Division. Whenever the Deputy Administrator concurs in the findings and recommendations of the head of the agency, he shall issue an order to that effect, which shall be the final action of the Department of Labor with respect to the issues involved. Whenever the Deputy Administrator makes findings differing from those of the head of the agency, his decision shall be transmitted forthwith to the Administrator of the Wage and Hour Division for review. The Administrator shall issue a decision and order. In its discretion, the Wage Appeals Board may review the decision and order of the Administrator.

(c) Whenever the head of an agency finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act and to be $100.00 or less is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, he may make an appropriate adjustment in such liquidated damages or relieve the contractor or subcontractor of liability for such liquidated damages without submitting recommendations to this effect to the Secretary. This delegation of authority is made under section 105 of the Contract Work Hours and Safety Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.

(5 U.S.C. 301, secs. 104, 105, 76 Stat. 358, 359; 40 U.S.C. 330, 331)

[29 FR 103, Jan. 4, 1964, as amended at 33 FR 8448, June 7, 1968]

§ 5.9 Suspension of funds.

In the event of failure or refusal of the contractor or any subcontractor to comply with labor standards stipulations required by the regulations contained in this part and the applicable statutes listed in § 5.1, the Federal agency shall take such action as may be necessary to cause the suspension of the payment, advance or guarantee of funds until such time as the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

[29 FR 103, Jan. 4, 1964]

§ 5.10 Restitution, criminal action.

(a) The Agency Head may, in appropriate cases where violations of the labor standards clauses required by the regulations contained in this part and the applicable statutes listed in § 5.1 resulting in underpayment of wages to employees are found to be nonwillful, request that restitution be made to such employees or on their behalf to plans, funds, or programs for any type of fringe benefit prescribed in the applicable wage determination.

(b) In cases where the Agency Head finds substantial evidence that such violations are willful and in violation of a criminal statute, the Agency Head shall forward the matter to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Secretary of Labor shall be informed of the action taken.

[29 FR 103, Jan. 4, 1964, as amended at 29 FR 13464, Sept. 30, 1964]

§ 5.11 Department of Labor investigations, hearings.

(a) The Secretary of Labor shall cause to be made such investigations as he deems necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in § 5.1, or to affirm or reject the recommendations by the Head of an agency for an appropriate adjustment in liquidated damages assessed under the Contract Work Hours and Safety Standards Act. Federal agencies, contractors, subcontractors, sponsors, applicants or owners shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigation. Any authorized representative of the Department of Labor under this section is deemed a person designated to aid in the enforcement of the overtime standards required by the Contract Work Hours and Safety Standards Act within the meaning of section 104(a) of that Act. A report of the investigation of such representative shall be transmitted to proper officers of the United States, any territory or possession, as the case may be, as required by the aforesaid section 104(a).

(b) In the event of disputes concerning the payment of prevailing wage rates or proper classifications which involve significant sums of money, large groups of employees, or novel or unusual situations, the Secretary of Labor may, upon request by a Federal agency or on his own motion, direct a hearing to be held. For the purpose of the hearing the Chief Administrative Law Judge shall, in writing, designate an administrative law judge who shall, after notice to all interested parties, make such investigation and conduct such hearings as may be necessary and render a decision embodying his findings and conclusions and if wages are found to be due, the amounts thereof. The administrative law judge's decision shall be sent to the interested parties and shall be final unless a petition for review of the decision by the Administrator of the Wage and Hour Division is filed by any such parties in quadruplicate with the Chief Administrative Law Judge, United States Department of Labor, Washington, D.C. 20036, within 20 days after receipt thereof. The petition for review must set out separately and particularly each objection asserted. The petition for review and the record which shall include the administrative law judge's decision then shall be certified by the administrative law judge to the Administrator. The petitioner may file a brief (original and four copies) in support of his petition within the 20-day period and any interested party upon whom the administrative law judge's decision has been served may within 10 days after the expiration of the time for filing the petition for review, file a brief in support of, or in opposition to the administrative law judge's decision. The Administrator's decision shall be subject to such further review by the Wage Appeals Board, as it may provide in its discretion.

[29 FR 103, Jan. 4, 1964, as amended at 40 FR 30482, July 21, 1975]

§ 5.12 Rulings and interpretations.

All questions arising in any agency relating to the application and interpretation of the rules contained in this part and in Parts 1 and 3 of this subtitle, and of the labor standards provisions of any of the statutes listed in § 5.1 shall be referred to the Secretary for appropriate ruling or interpretation. The rulings and interpretations shall be authoritative and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be addressed to the Secretary of Labor, United States Department of Labor, Washington D.C. 20210.

[29 FR 103, Jan. 4, 1964]

§ 5.13 Variations, tolerances, and exemptions from Parts 1 and 3 of this subtitle and this part.

The Secretary may make variations, tolerances, and exemptions from the requirements of this part and those of Parts 1 and 3 of this subtitle whenever he finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship.

[29 FR 103, Jan. 4, 1964]

§ 5.14 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

(a) *General.* Upon his own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours and Safety Standards Act reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of that Act whenever he finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.

(b) *Exemptions.* Pursuant to section 105 of the Contract Work Hours and Safety Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:

(1) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.

(2) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831i).

(3) Contracts of $2,000.00 or less.

(4) Purchases and contracts other than construction contracts in the aggregate amount of $2,500.00 or less. In arriving at the aggregate amount involved, there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising.

(5) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; Johnston Island; Canton Island; and the Canal Zone.

(c) *Tolerances.* (1) The "basic rate of pay" under section 102 of the Contract Work Hours and Safety Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in Part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.

(2) Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the Fair Labor Standards Act and § 778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the "regular rate" under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the "basic rate" under the Contract Work Hours and Safety Standards Act.

(3) See § 5.8(c) providing a tolerance subdelegating authority to the heads of agencies to make appropriate adjustments in the assessment of liquidated damages totaling $100.00 or less under specified circumstances.

(4)(i) Time spent in an organized program of related, supplemental instruction by laborers or mechanics employed under bona fide apprenticeship programs may be excluded from working time if the criteria prescribed in paragraphs (c)(4)(ii) and (iii) of this section are met.

(ii) The apprentice comes within the definition contained in § 5.2(c).

(iii) The time in question does not involve productive work or performance of the apprentice's regular duties.

(d) *Variations.* (1) In order to prevent undue hardship, a workday consisting of a fixed and recurring 24-hour period commencing at the same time on each calendar day may be used in lieu of the calendar day in applying the daily overtime provisions of the Act to the employment of firefighters or fireguards, under the following conditions: (i) Where such employment is under a platoon system requiring such employees to remain at or within the confines of their post of duty in excess of eight hours per day in a standby or on-call status; and (ii) if the use of such alternate 24-hour day has been agreed upon between the employer and such employees or their authorized representatives before performance of the work; and (iii) provided that, in determining the daily and the weekly overtime requirements of the Act in any particular workweek of any such employee whose established workweek begins at an hour of the calendar day different from the hour when such agreed 24-hour day commences, the hours worked in excess of 8 hours in any such 24-hour day shall be counted in the established workweek (of 168 hours commencing at the same time each week) in which such hours are actually worked.

(2) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the United States, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages.

(3) In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of Section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 8 hours in any calendar day or 40 hours in the workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1½ times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(Sec. 105, 76 Stat. 359; 40 U.S.C. 331)

[29 FR 104, Jan. 4, 1964, as amended at 29 FR 13464, Sept. 30, 1964, 30 FR 7819, June 17, 1965; 32 FR 1088, Jan. 31, 1967; 34 FR 18753, Nov. 22, 1969; 36 FR 8949, May 15, 1971; 38 FR 19970, July 26, 1973; 42 FR 62132, Dec. 9, 1977]

§ 5.15 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.

(a) Notwithstanding the provisions of § 5.5(a)(4)(ii) relating to the utilization of trainees on Federal and federally assisted construction, no contractor shall be required to obtain approval of a training program which, prior to August 20, 1975, was approved by the Department of Labor for purposes of the Davis-Bacon and Related Acts, was established by agreement of organized labor and management and therefore recognized by the Department, and/or was recognized by the Department under Executive Order 11246, as amended. A copy of the program and evidence of its prior approval, if applicable, shall be submitted to the Bureau of Apprenticeship and Training, which shall certify such prior approval or recognition of the program. In every other respect, the provisions of § 5.5(a)(4)(ii)— including those relating to registration of trainees, permissible ratios, and wage rates to be paid—shall apply to these programs.

(b) Every trainee employed on a contract executed on and after August 20, 1975, in one of the above training programs must be individually registered in the program in accordance with BAT procedures, and must be paid at the rate specified in the program for his level of progress. Any such employee listed on the payroll at a trainee rate who is not registered and participating in a program certified by BAT pursuant to this section, or approved and certified by BAT pursuant to § 5.5(a)(4)(ii), must be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The ratio of trainees to journeymen shall not be greater than permitted by the terms of the program.

(c) In the event a program which was recognized or approved prior to August 20, 1975, is modified, revised, extended, or renewed, the changes in the program or its renewal must be approved by the Bureau of Apprenticeship and Training before they may be placed into effect.

[40 FR 30483, July 21, 1975]

§ 5.16 Withdrawal of approval of a training program.

If at any time the Bureau of Apprenticeship and Training determines, after opportunity for a hearing, that the standards of any program, whether it is one recognized or approved prior to August 20, 1975, or a program subsequently approved, have not been complied with, or that such a program fails to provide adequate training for participants, a contractor will no longer be permitted to utilize trainees at less than the predetermined rate for the classification of work actually performed until an acceptable program is approved. If the contractor brings an appeal pursuant to § 5.17 within 30 days of his receipt of a certified letter withdrawing the Bureau of Apprenticeship and Training's approval, the effect of the withdrawal of approval of the program will be delayed until a decision is rendered on the appeal.

[40 FR 30483, July 21, 1975]

§ 5.17 Appeal from Bureau of Apprenticeship and Training's decisions.

(a) Appeal from a withdrawal of approval of a training program by the Bureau of Apprenticeship and Training pursuant to § 5.16 may be made to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Washington, D.C. 20210. Appeals brought more than 30 days after the contractor's receipt of notice of withdrawal of approval of a program will be processed, but the effects of withdrawal of approval of the program will not be delayed during consideration of such an appeal.

(b) Appeal from disapproval of new training programs whose approval is requested pursuant to these regulations may be made to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Washington, D.C. 20210.

(c) The Assistant Secretary for Employment and Training (or his designee) shall examine the complete record on the basis of which the denial was issued, including the application for the program, supporting data, Bureau of Apprenticeship and Training decision, and any written argument which the applicant may submit, and any reply thereto by the Bureau of Apprenticeship and Training. Copies of any such reply shall be served on the applicant. The Assistant Secretary, or his designee, shall approve or disapprove the decision of the Bureau or shall advise what modifications are necessary for approval of the program. This decision by the Assistant Secretary or his designee shall be final.

[40 FR 30483, July 21, 1975, as amended at 41 FR 10063, Mar. 9, 1976]

EFFECTIVE DATE NOTE: At 47 FR 23665, May 28, 1982, Subpart A was revised, effective July 27, 1982. At 47 FR 32070, July 26, 1982, the effective date was suspended indefinitely. The prior text of Subpart A remains in effect. For the convenience of the user the suspended text follows.

In order to determine the effective text at any date after the revision date of this volume (July 1, 1982), the user must consult the daily FEDERAL REGISTER.

Subpart A—Davis-Bacon and Related Acts Provisions and Procedures

AUTHORITY: 40 U.S.C. 276a-276a-7; 40 U.S.C. 276c; 40 U.S.C. 327-332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; and the statutes listed in section 5.1(a) of this part.

SOURCE: 47 FR 23665, May 28, 1982, unless otherwise noted.

§ 5.1 Purpose and scope.

(a) The regulations contained in this part are promulgated under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950 and the Copeland Act in order to *coordinate* the administration and enforcement of the labor standards provisions of each of the following acts by the Federal agencies responsible for their administration and of such additional statutes as may from time to time confer upon the Secretary of Labor additional duties and responsibilities similar to those conferred upon the Secretary of Labor under Reorganization Plan No. 14 of 1950:

1. The Davis-Bacon Act (sec. 1-7, 46 Stat. 1949, as amended; Pub. L. 74-403, 40 U.S.C. 276a-276a-7).
2. Copeland Act (40 U.S.C. 276c).
3. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332).
4. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).
5. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).
6. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86-372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).
7. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).
8. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).
9. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).
10. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).
11. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendements of 1969 (sec. 423 as added by Pub. L. 91-230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92-318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.
12. The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821; 23 U.S.C. 113).
13. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).
14. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).
15. Rehabilitation Act of 1973 (sec. 306(b)(5) 87 Stat. 384, 29 U.S.C. 776(b)(5)).
16. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 88 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).
17. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).
18. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).
19. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).
20. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).
21. National Visitors Center Facilities Act of 1966 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).
22. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).
23. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2) thereof, 88 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).
24. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).
25. Health Professions Educational Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2258, 42 U.S.C. 293a(c)(7)).
26. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 384; 42 U.S.C. 296a(b)(5)).
27. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).
28. Safe Drinking Water Act (sec. 2(a) see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j-9(e)).
29. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o-3(b)(1)(H)).
30. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).
31. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).
32. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).
33. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).
34. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c-3).

35. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

36. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

37. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

38. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

39. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

40. Older Americans Act of 1965 (sec. 502, Pub. L. 89-73, as amended by sec. 501, Pub. L. 93-29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

41. Public Works and Economic Development Act of 1965 (sec. 712; 79 Stat. 575 as amended; 42 U.S.C. 3222).

42. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

43. New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).

44. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

45. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

46. Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

47. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

48. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).

49. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

50. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

51. Solid Waste Disposal Act (sec. 2, 90 Stat. 2823; 42 U.S.C. 6979).

52. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

53. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

54. Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

55. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

56. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281i).

57. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 644; 40 U.S.C. 682(b)(4). NOTE.—Repealed December 9, 1969, and labor standards incorporated in sec. 1-1431 of the District of Columbia Code).

58. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89-694, but not in the United States Code).

59. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87-328) (considered a statute for purposes of the plan but not in the United States Code).

60. Energy Security Act (sec. 175(c), Pub. L. 96-294, 94 Stat. 611; 42 U.S.C. 8701 note).

(b) Part 1 of this subtitle contains the Department's procedural rules governing requests for wage determinations and the issuance and use of such wage determinations under the Davis-Bacon Act and its related statutes as listed in that part.

§ 5.2 Definitions.

(a) The term "Secretary" includes the Secretary of Labor, the Deputy Under Secretary for Employment Standards, and their authorized representatives.

(b) The term "Administrator" means the Administrator of the Wage and Hour Division or the authorized representative as set forth in this part. In the absence of the Wage-Hour Administrator, the Deputy Administrator of the Wage and Hour Division, is designated to act for the Administrator under this part. Except as otherwise provided in this part, the Assistant Administrator for Government Contract Wage Standards is the authorized representative of the Administrator in the administration of the statutes listed in § 5.1.

(c) The term "Federal agency" means the agency or instrumentality of the United States which enters into the contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to the project subject to a statute listed in § 5.1.

(d) The term "Agency Head" means the principal official of the Federal agency and includes those persons duly authorized to act in the behalf of the Agency Head.

(e) The term "Contracting Officer" means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.

(f) The term "labor standards" as used in this part means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes listed in § 5.1, and the regulations in Parts 1 and 3 of this subtitle and this part.

(g) The term "United States or the District of Columbia" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District

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of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities.

(h) The term "contract" means any prime contract which is subject wholly or in part to the labor standards provisions of any of the acts listed in § 5.1 and any subcontract of any tier thereunder, let under the prime contract. A State or local Government is not regarded as a contractor under statutes providing loans, grants, or other Federal assistance in situations where construction is preformed by its own employees. However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards.

(i) The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a "building" or "work" within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(j) The terms "construction", "prosecution", "completion", or "repair" mean all types of work done on a particular building or work at the site thereof (or, under the United States Housing Act of 1937 and the Housing Act of 1949, all work done in the construction or development of the project), including without limitation, altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work (or, under the United States Housing Act of 1937 and the Housing Act of 1949, in the construction or development of the project), by persons employed by the contractor or subcontractor. However, the term "initial construction" in section 113 of Title 23, U.S.C., which pertains to Federal-aid highway work, does not include repair or maintenance work.

(k) The term "public building" or "public work" includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(l) The term "site of the work" is defined as follows:

(1) The "site of the work" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and, as discussed in paragraph (l)(2) of this section, other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the "site".

(2) Except as provided in paragraph (l)(3) of this section, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are part of the "site of the work" provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

(3) Not included in the "site of the work" are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the work". Such permanent, previously established facilities are not a part of the "site of the work", even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

(m) The term "laborer" or "mechanic" includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are per-

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forming the work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in Part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of Part 541, are laborers and mechanics for the time so spent.

(n) The terms apprentice, trainee, and helper are defined as follows:

(1) "Apprentice" means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

(3) These provisions do not apply to "apprentices" and "trainees" employed on projects subject to 23 U.S.C. 113 who are enrolled in programs which have been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(4) A "helper" is a semi-skilled worker (rather than a skilled journeyman mechanic) who works under the direction of and assists a journeyman. Under the journeyman's direction and supervision, the helper performs a variety of duties to assist the journeyman such as preparing, carrying and furnishing materials, tools, equipment, and supplies and maintaining them in order; cleaning and preparing work areas; lifting, positioning, and holding materials or tools; and other related, semi-skilled tasks as directed by the journeyman. A helper may use tools of the trade at and under the direction and supervision of the journeyman. The particular duties performed by a helper vary according to area practice.

(o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is "employed" regardless of any contractual relationship alleged to exist between the contractor and such person.

(p) The term "wages" means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(q) The term "wage determination" includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of § 1.6 of this title.

§§ 5.3–5.4 [Reserved]

§ 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, or a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the par-

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ticular needs of the agency. *Provided*, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(*1*) Except with respect to helpers as defined in 29 CFR 5.2(n)(4), work to be performed by the classification requested is not performed by a classification in the wage determination; and

(*2*) The classification is utilized in the area by the construction industry; and

(*3*) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, agree with the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, or the laborers or mechanics to be employed in the classification or their representatives, do not agree with the contracting officer on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated

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in providing bona fide fringe benefits under a plan or program, *Provided,* That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding.* The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. (Approved by the Office of Management and Budget under OMB control number 1215-0017.) Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a "Statement of Compliance" to the (write in name of appropriate Federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the "Statement of Compliance" to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The prime contractor is responsible for the submission of the "Statement of Compliance" by all subcontractors.

(B) Each "Statement of Compliance" shall be signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(*1*) That the payroll for the payroll period contains the information required to be maintained under § 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;

(*2*) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(*3*) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspec-

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tion, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. In addition, the contractor or subcontractor shall submit the required payroll records upon request of authorized representatives of the (write the name of the agency) or the Department of Labor. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices, trainees, and helpers*—(i) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division dertermines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administra-

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tion withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(iv) *Helpers.* Helpers will be permitted to work on a project if the helper classification is specified on an applicable wage determination or is approved pursuant to the conformance procedure set forth in § 5.5(a)(1)(ii). The allowable ratio of helpers to journeymen employed by the contractor or subcontractor on the job site shall not be greater than two helpers for every three journeymen (in other words, not more than 40 percent of the total number of journeymen and helpers in each contractor's or in each subcontractor's own work force employed on the job site). Any worker listed on a payroll at a helper wage rate, who is not a helper as defined in 29 CFR 5.2(n)(4), shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any helper performing work on the job site in excess of the ratio permitted shall be paid not less than the applicable journeyman's (or laborer's, where appropriate) wage rate on the wage determination for the work actually performed.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and related Act requirements.* All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of Eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or § 4.6 of this title. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of

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work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $10 for each calendar day or which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b) (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b) (1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job. (Approved by the Office of Management and Budget under OMB control number 1215-0017.)

EFFECTIVE DATE NOTE: Section 5.5, paragraphs (a)(1)(ii), (iv), and (a)(3)(i) which contain information collection requirements under review by OMB, are not effective until approved by OMB. See the daily FEDERAL REGISTER for OMB approval.

§ 5.6 Enforcement.

(a)(1) It shall be the responsibility of the Federal agency to ascertain whether the clauses required by § 5.5 have been inserted in the contracts subject to the labor standards provisions of the Acts contained in § 5.1. Agencies which do not directly enter into such contracts shall promulgate the necessary regulations or procedures to require the recipient of the Federal assistance to insert in its contracts the provisions of § 5.5. No payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency unless the agency insures that the clauses required by § 5.5 and the appropriate wage determination of the Secretary of Labor are contained in such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency after the beginning of construction unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of § 5.5 or unless there is on file with the agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(2) Statements of Compliance submitted pursuant to § 5.5(a)(3)(ii) shall be preserved by the Federal agency for a period of 3 years from the date of completion of the contract and shall be produced at the request of the Department of Labor at any time during the 3-year period.

(3) The Federal agency shall cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by § 5.5 and the applicable statutes listed in § 5.1. Investigations shall be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees, which shall be taken in confidence, and examinations of payroll data and evidence of regis-

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tration and certification with respect to apprenticeship and training plans. Requests for submission of payrolls as provided in § 5.5(a)(3)(iii) shall be made only in conjunction with specific compliance checks or enforcement actions. In making such examinations, particular care shall be taken to determine the correctness of classifications and to determine whether there is a disproportionate employment of laborers, of helpers where they are listed on the wage determination or conformed under § 5.5(a)(1)(ii), and of apprentices or trainees registered in approved programs. Such investigations shall also include evidence of fringe benefit plans and payments thereunder. Complaints of alleged violations shall be given priority.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages and liquidated damages and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(5) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the employee's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the employee.

Disclosure of employee statements shall be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see 29 CFR Part 70) and the "Privacy Act of 1974" (5 U.S.C. 552a).

(b) The Administrator shall cause to be made such investigations as deemed necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in § 5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes listed in § 5.1. Federal agencies, contractors, subcontractors, sponsors, applicants, or owners shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations. The findings of such an investigation, including amounts found due, may not be altered or reduced without the approval of the Department of Labor. Where the underpayments disclosed by such an investigation total $1,000 or more, where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), or where liquidated damages may be assessed under the Contract Work Hours and Safety Standards Act, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation and any action taken by the contractor to correct the violative practices, including any payment of back wages. In other circumstances, the Federal agency will be furnished a letter of notification summarizing the findings of the investigation.

§ 5.7 Reports to the Secretary of Labor.

(a) *Enforcement reports.* (1) Where underpayments by a contractor or subcontractor total less than $1,000, and where there is no reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act that the contractor has disregarded its obligations to employees and subcontractors), and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations to the Administrator, unless the investigation was made at the request of the Department of Labor. In the latter case, the Federal agency shall submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, corrective measures taken (such as "letters of notice"), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under § 5.8.

(2) Where underpayments by a contractor or subcontractor total $1,000 or more, or where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), the Federal agency shall furnish within 60 days after completion of its investigation, a detailed enforcement report to the Administrator.

(b) *Semi-annual enforcement reports.* To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies shall furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in memoranda issued

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to Federal agencies by the Administrator. This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 1482-DOL-SA.

(c) *Additional information.* Upon request, the Agency Head shall transmit to the Administrator such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Administrator may find necessary for the performance of his or her duties with respect to the labor standards provisions referred to in this part.

(b) *Contract termination.* Where a contract is terminated by reason of violations of the labor standards provisions of the statues listed in § 5.1, a report shall be submitted promptly to the Administrator and to the Comptroller General (if the contract is subject to the Davis-Bacon Act), giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, and the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of the contract, and the description of the work to be performed.

§ 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.

(a) The Contact Work Hours and safety Standards Act requires that laborers or mechanics shall be paid wages at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or forty hours in any work week. In the event of violation of this provision, the contractor and any subcontractor shall be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act in the amount of $10 for each calendar day or workweek in which such individual was required or permitted to work without payment of required overtime wages. Any contractor or subcontractor aggrieved by the withholding of liquidated damages shall have the right to appeal to the head of the agency of the United States (or the territory or District of Columbia, as appropriate) for which the contract work was performed or for which financial assistance was provided.

(b) *Findings and recommendations of the Agency Head.* The Agency Head has the authority to review the administrative determination of liquidated damages and to issue a final order affirming the determination. It is not necessary to seek the concurrence of the Administrator but the Administration shall be advised of the action taken. Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, and the amount of the liquidated damages computed for the contract is in excess of $500, the Agency Head may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages shall include findings with respect to any wage underpayments for which the liquidated damages are determined.

(c) The recommendations of the Agency Head for adjustment or relief from liquidated damages under paragraph (a) of this section shall be reviewed by the Administrator or an authorized representative who shall issue an order concurring in the recommendations, partially concurring in the recommendations, or rejecting the recommendations, and the reasons therefor. The order shall be the final decision of the Department of Labor, unless a petition for review is filed pursuant to Part 7 of this title, and the Wage Appeals Board in its discretion reviews such decision and order; or, with respect to contracts subject to the Service Contract Act, unless petition for review is filed pursuant to Part 8 of this title, and the Board of Service Contract Appeals in its discretion reviews such decision and order.

(d) Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act for a contract is $500 or less and the Agency Head finds that the sum of liquidated damages is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, an appropriate adjustment may be made in such liquidated damages or the contractor or subcontractor may be relieved of liability for such liquidated damages without submitting recommendations to this effect or a report to the Department of Labor. This delegation of authority is made under section 105 of the Contract Work Hours and Safety Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.

§ 5.9 Suspension of funds.

In the even of failure or refusal of the contractor or any subcontractor to comply with the labor standards clauses contained in § 5.5 and the applicable statutes listed in

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§ 5.1, the Federal agency, upon its own action or upon written request of an authorized representative of the Department of Labor, shall take such action as may be necessary to cause the suspension of the payment, advance or guarantee of funds until such time as the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

§ 5.10 Restitution, criminal action.

(a) In cases other than those forwarded to the Attorney General of the United States under paragraph (b), of this section, where violations of the labor standards clauses contained in § 5.5 and the applicable statutes listed in § 5.1 result in underpayment of wages to employees, the Federal agency or an authorized representative of the Department of Labor shall request that restitution be made to such employees or on their behalf to plans, funds, or programs for any type of bona fide fringe benefits within the meaning of section 1(b)(2) of the Davis-Bacon Act.

(b) In cases where the Agency Head or the Administrator finds substantial evidence that such violations are willful and in violation of a criminal statute, the matter shall be forwarded to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Administrator shall be informed simultaneously of the action taken.

§ 5.11 Dispute concerning payment of wages.

(a) This section sets forth the procedure for resolution of disputes of fact or law concerning payment of prevailing wage rates, overtime pay, or proper classification. The procedures in this section may be initiated upon the Administrator's own motion, upon referral of the dispute by a Federal agency pursuant to § 5.5(a)(9), or upon request of the contractor or subcontractor(s).

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings. If the Administrator determines that there is reasonable cause to believe that the contractor and/or subcontractor(s) should also be subject to debarment under the Davis-Bacon Act or § 5.12(a)(1), the letter will so indicate.

(2) A contractor and/or subcontractor desiring a hearing concerning the Administrator's investigative findings shall request such a hearing by letter postmarked within 30 days of the date of the Administrator's letter. The request shall set forth those findings which are in dispute and the reasons therefor, including any affirmative defenses, with respect to the violations and/or debarment, as appropriate.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR Part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceeding under § 5.12, the Administrator shall notify the contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings, and shall issue a ruling on any issues of law known to be in dispute.

(2)(i) If the contractor and/or subcontractor(s) disagree with the factual findings of the Administrator or believe that there are relevant facts in dispute, the contractor or subcontractor(s) shall so advise the Administrator by letter postmarked within 30 days of the date of the Administrator's letter. In the response, the contractor and/or subcontractor(s) shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a response under paragraph (c)(1)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor and subcontractor(s) (if any) accordingly.

(3) If the contractor and/or subcontractor(s) desire review of the ruling issued by the Administrator under paragraph (c)(1) or (2) of this section, the contractor and/or subcontractor(s) shall file a petition for review thereof with the Wage Appeals Board within 30 days of the date of the ruling, with a copy thereof the Administrator. The petition for review shall be filed in accordance with Part 7 of this title.

(d) If a timely response to the Administrator's findings or ruling is not made or a timely petition for review is not filed, the Administrator's findings and/or ruling shall be final, except that with respect to debarment under the Davis-Bacon Act, the Ad-

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ministrator shall advise the Comptroller General of the Administrator's recommendation in accordance with § 5.12(a)(1). If a timely response or petition for review is filed, the findings and/or ruling of the Administrator shall be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Wage Appeals Board.

§ 5.12 Debarment proceedings.

(a)(1) Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in § 5.1 other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided below) to receive any contracts or subcontracts subject to any of the statutes listed in § 5.1.

(2) In cases arising under contracts covered by the Davis-Bacon Act, the Administrator shall transmit to the Comptroller General the names of the contractors or subcontractors and their responsible officers, if any (and any firms in which the contractors or subcontractors are known to have an interest), who have been found to have disregarded their obligations to employees, and the recommendation of the Secretary of Labor or authorized representative regarding debarment. The Comptroller General will distribute a list to all Federal agencies giving the names of such ineligible person or firms, who shall be ineligible to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor standards provisions of the statutes listed in § 5.1.

(b)(1) In addition to cases under which debarment action is initiated pursuant to § 5.11, whenever as a result of an investigation conducted by the Federal agency or the Department of Labor, and where the Administrator finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of the labor standards provisions of any of the statutes listed in § 5.1 (other than the Davis-Bacon Act), or has committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees or subcontractors under section 3(a) thereof, the Administrator shall notify by registered or certified mail to the last known address, the contractor or subcontractor and its responsible officers, if any (and any firms in which the contractor or subcontractor are known to have a substantial interest), of the finding. The Administrator shall afford such contractor or subcontractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under paragraph (a)(1) of this section or section 3(a) of the Davis-Bacon Act. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or subcontractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter postmarked within 30 days of the date of the letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefor, including any affirmative defenses to be raised. Upon receipt of such request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute. In considering debarment under any of the statutes listed in § 5.1 other than the Davis-Bacon Act, the Administrative Law Judge shall issue an order concerning whether the contractor or subcontractor is to be debarred in accordance with paragraph (a)(1) of this section. In considering debarment under the Davis-Bacon Act, the Administrative Law Judge shall issue a recommendation as to whether the contractor or subcontractor should be debarred under section 3(a) of the Act.

(2) Hearings under this section shall be conducted in accordance with 29 CFR Part 6. If no hearing is requested within 30 days of receipt of the letter from the Administrator, the Administrator's findings shall be final, except with respect to recommendations regarding debarment under the Davis-Bacon Act, as set forth in paragraph (a)(2) of this section.

(c) Any person or firm debarred under § 5.12(a)(1) may in writing request removal from the debarment list after six months from the date of publication by the Comptroller General of such person or firm's name on the ineligible list. Such a request should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, and shall contain a full explanation of the reasons why such person or firm should be removed from the ineligible list. In cases where the contractor or subcontractor failed to make full restitution to all underpaid employees, a request for removal will not be considered until such underpayments are made. In all other cases, the Administrator will examine

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the facts and circumstances surrounding the violative practices which caused the debarment, and issue a decision as to whether or not such person or firm has demonstrated a current responsibility to comply with the labor standards provisions of the statutes listed in § 5.1, and therefore should be removed from the ineligible list. Among the factors to be considered in reaching such a decision are the severity of the violations, the contractor or subcontractor's attitude towards compliance, and the past compliance history of the firm. In no case will such removal be effected unless the Administrator determines after an investigation that such person or firm is in compliance with the labor standards provisions applicable to Federal contracts and federally assisted construction work subject to any of the applicable statutes listed in § 5.1 and other labor statutes providing wage protection, such as the Service Contract Act, the Walsh-Healey Public Contracts Act, and the Fair Labor Standards Act. If the request for removal is denied, the person or firm may petition for review by the Wage Appeals Board pursuant to 29 CFR Part 7.

(d)(1) Section 3(a) of the Davis-Bacon Act provides that for a period of three years from date of publication on the ineligible list, no contract shall be awarded to any persons or firms placed on the list as a result of a finding by the Comptroller General that such persons or firms have disregarded obligations to employees and subcontractors under that Act, and further, that no contract shall be awarded to "any firm, corporation, partnership, or association in which such persons or firms have an interest." Paragraph (a)(1) of this section similarly provides that for a period not to exceed three years from date of publication on the ineligible list, no contract subject to any of the statutes listed in § 5.1 shall be awarded to any contractor or subsontractor on the ineligible list pursuant to that paragraph, or to "any firm, corporation, partnership, or association" in which such contractor or subcontractor has a "substantial interest." A finding as to whether persons or firms whose names appear on the ineligible list have an interest (or a substantial interest, as appropriate) in any other firm, corporation, partnership, or association, may be made through investigation, hearing, or otherwise.

(2)(i) The Administrator, on his/her own motion or after receipt of a request for a determination pursuant to paragraph (d)(3) of this section may make a finding on the issue of interest (or substantial interest, as appropriate).

(ii) If the Administrator determines that there may be an interest (or substantial interest, as appropriate), but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (d)(4) of this section.

(iii) If the Administrator finds that no interest (or substantial interest, as appropriate) exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.

(iv)(A) If the Administrator finds that an interest (or substantial interest, as appropriate) exists, the person or firm affected will be notified of the Administrator's finding (by certified mail to the last known address), which shall include the reasons therefor, and such person or firm shall be afforded an opportunity to request that a hearing be held to render a decision on the issue.

(B) Such person or firm shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(C) If no hearing is requested within the time mentioned in paragraph (d)(2)(iv)(B) of this section, the Administrator's finding shall be final and the Administrator shall so notify the Comptroller General. If a hearing is requested, the ruling of the Administrator shall be inoperative unless and until the administrative law judge or the Wage Appeals Board issues an order that there is an interest (or substantial interest, as appropriate).

(3)(i) A request for a determination of interest (or substantial interest, as appropriate), may be made by any interested party, including contractors or prospective contractors and associations of contractor's representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, to the attention of the Office of Government Contract Wage Standards.

(ii) The request shall include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has an interest (or a substantial interest, as appropriate) in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia, or which is subject to any of the statutes listed in § 5.1. No particular form is prescribed for the submission of a request under this section.

(4) *Referral to the Chief Administrator Law Judge.* The Administrator, on his/her own motion under paragraph (d)(2)(ii) of this section or upon a request for hearing

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where the Administrator determines that relevant facts are in dispute, will by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceedings shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

(5) *Referral to the Wage Appeals Board.* If the person or firm affected requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Wage Appeals Board to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR Part 7.

§ 5.13 Rulings and interpretations.

All questions relating to the application and interpretation of wage determinations (including the classifications therein) issued pursuant to Part 1 of this subtitle, of the rules contained in this part and in Parts 1 and 3, and of the labor standards provisions of any of the statutes listed in § 5.1 shall be referred to the Administrator for appropriate ruling or interpretation. The rulings and interpretations shall be authoritative and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

§ 5.14 Variations, tolerances, and exemptions from Parts 1 and 3 of this subtitle and this part.

The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of this part and those of Parts 1 and 3 of this subtitle whenever the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship. Variations, tolerances, and exemptions may not be made from the statutory requirements of any of the statutes listed in § 5.1 unless the statute specifically provides such authority.

§ 5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

(a) *General.* Upon his or her own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours and Safety Standards Act reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of that Act whenever the Secretary finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.

(b) *Exemptions.* Pursuant to section 105 of the Contract Work Hours and Safety Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:

(1) Contracts of $2,000.00 or less.

(2) Purchases and contracts other than construction contracts in the aggregate amount of $2,500.00 or less. In arriving at the aggregate amount involved, there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising.

(3) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

(4) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.

(5) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 8311).

(c) *Tolerances.* (1) The "basic rate of pay" under section 102 of the Contract Work Hours and Safety Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in Part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.

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(2) Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the Fair Labor Standards Act and § 778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the "regular rate" under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the "basic rate" under the Contract Work Hours and Safety Standards Act.

(3) See § 5.8(c) providing a tolerance subdelegating authority to the heads of agencies to make appropriate adjustments in the assessment of liquidated damages totaling $500 or less under specified circumstances.

(4)(i) Time spent in an organized program of related, supplemental instruction by laborers or mechanics employed under bona fide apprenticeship or training programs may be excluded from working time if the criteria prescribed in paragraphs (c)(4)(ii) and (iii) of this section are met.

(ii) The apprentice or trainee comes within the definition contained in § 5.2(n).

(iii) The time in question does not involve productive work or performance of the apprentice's or trainee's regular duties.

(d) *Variations.* (1) In order to prevent undue hardship, a workday consisting of a fixed and recurring 24-hour period commencing at the same time on each calendar day may be used in lieu of the calendar day in applying the daily overtime provisions of the Act to the employment of firefighters or fireguards, under the following conditions: (i) Where such employment is under a platoon system requiring such employees to remain at or within the confines of their post of duty in excess of 8 hours per day in a standby or on-call status; and (ii) if the use of such alternate 24-hour day has been agreed upon between the employer and such employees or their authorized representatives before performance of the work; and (iii) provided that, in determining the daily and the weekly overtime requirements of the Act in any particular workweek of any such employee whose established workweek begins at an hour of the calendar day different from the hour when such agreed 24-hour day commences, the hours worked in excess pf 8 hours in any such 24-hour day shall be counted in the established workweek (of 168 hours commencing at the same time each week) in which such hours are actually worked. (Approved by the Office of Management and Budget under OMB control number 1215-0017.)

(2) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the Unites States, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages.

(3) In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of Section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 8 hours in any calendar day or 40 hours in the workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1½ times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended. (Approved by the Office of Management and Budget under OMB control number 1215-0017.)

§ 5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.

(a) Notwithstanding the provisions of § 5.5(a)(4)(ii) relating to the utilization of trainees on Federal and federally assisted construction, no contractor shall be required to obtain approval of a training program which, prior to August 20, 1975, was approved by the Department of Labor for purposes of the Davis-Bacon and Related Acts, was established by agreement of organized labor and management and therefore recognized by the Department, and/or was recognized by the Department under Executive Order 11246, as amended. A copy of the program and evidence of its prior approval, if applicable shall be submitted to the Employment and Training Administration, which shall certify such prior approval or recognition of the program. In every other respect, the provisions of § 5.5(a)(4)(ii)—including those relating to registration of

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trainees, permissible ratios, and wage rates to be paid—shall apply to these programs.

(b) Every trainee employed on a contract executed on and after August 20, 1975, in one of the above training programs must be individually registered in the program in accordance with Employment and Training Administration procedures, and must be paid at the rate specified in the program for the level of progress. Any such employee listed on the payroll at a trainee rate who is not registered and participating in a program certified by ETA pursuant to this section, or approved and certified by ETA pursuant to § 5.5(a)(4)(ii), must be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed. The ratio of trainees to journeymen shall not be greater than permitted by the terms of the program.

(c) In the event a program which was recognized or approved prior to August 20, 1975, is modified, revised, extended, or renewed, the changes in the program or its renewal must be approved by the Employment and Training Administration before they may be placed into effect.

§ 5.17 Withdrawal of approval of a training program.

If at any time the Employment and Training Administration determines, after opportunity for a hearing, that the standards of any program, whether it is one recognized or approved prior to August 20, 1975, or a program subsequently approved, have not been complied with, or that such a program fails to provide adequate training for participants, a contractor will no longer be permitted to utilize trainees at less than the predetermined rate for the classification of work actually performed until an acceptable program is approved.

Subpart B—Interpretation of the Fringe Benefits Provisions of the Davis-Bacon Act

SOURCE: 29 FR 13465, Sept. 30, 1964, unless otherwise noted.

§ 5.20 Scope and significance of this subpart.

The 1964 amendments (Pub. L. 88-349) to the Davis-Bacon Act require, among other things, that the prevailing wage determined for Federal and federally-assisted construction include: (a) The basic hourly rate of pay; and (b) the amount contributed by the contractor or subcontractor for certain fringe benefits (or the cost to them of such benefits). The purpose of this subpart is to explain the provisions of these amendments. This subpart makes available in one place official interpretations of the fringe benefits provisions of the Davis-Bacon Act. These interpretations will guide the Department of Labor in carrying out its responsibilities under these provisions. These interpretations are intended also for the guidance of contractors, their associations, laborers and mechanics and their organizations, and local, State and Federal agencies, who may be concerned with these provisions of the law. The interpretations contained in this subpart are authoritative and may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 359). The omission to discuss a particular problem in this subpart or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor with respect to such problem or to constitute an administrative interpretation, practice, or enforcement policy. Questions on matters not fully covered by this subpart may be referred to the Secretary for interpretation as provided in § 5.12.

§ 5.21 [Reserved]

§ 5.22 Effect of the Davis-Bacon fringe benefits provisions.

The Davis-Bacon Act and the prevailing wage provisions of the related statutes listed in § 1.1 of this subtitle confer upon the Secretary of Labor the authority to predetermine, as minimum wages, those wage rates found to be prevailing for corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the area in which the work is to be performed. See paragraphs (a) and (b) of § 1.2 of this subtitle. The fringe benefits amendments enlarge the scope of this authority by including certain bona fide fringe benefits within the meaning of the terms "wages", "scale of wages", "wage rates", "minimum wages" and "prevailing wages", as used in the Davis-Bacon Act.

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§ 5.23 The statutory provisions.

The fringe benefits provisions of the 1964 amendments to the Davis-Bacon Act are, in part, as follows:

> (b) As used in this Act the term "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" shall include—
>
> (1) The basic hourly rate of pay; and
>
> (2) The amount of—
>
> (A) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and
>
> (B) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected,
>
> for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits * * *.

§ 5.24 The basic hourly rate of pay.

"The basic hourly rate of pay" is that part of a laborer's or mechanic's wages which the Secretary of Labor would have found and included in wage determinations prior to the 1964 amendments. The Secretary of Labor is required to continue to make a separate finding of this portion of the wage. In general, this portion of the wage is the cash payment made directly to the laborer or mechanic. It does not include fringe benefits.

§ 5.25 Rate of contribution or cost for fringe benefits.

(a) Under the amendments, the Secretary is obligated to make a separate finding of the rate of contribution or cost of fringe benefits. Only the amount of contributions or costs for fringe benefits which meet the requirements of the act will be considered by the Secretary. These requirements are discussed in this subpart.

(b) The rate of contribution or cost is ordinarily an hourly rate, and will be reflected in the wage determination as such. In some cases, however, the contribution or cost for certain fringe benefits may be expressed in a formula or method of payment other than an hourly rate. In such cases, the Secretary may in his discretion express in the wage determination the rate of contribution or cost used in the formula or method or may convert it to an hourly rate of pay whenever he finds that such action would facilitate the administration of the Act. See § 5.5(a)(1)(i) and (iii).

§ 5.26 "* * * contribution irrevocably made * * * to a trustee or to a third person".

Under the fringe benefits provisions (Section 1(b)(2) of the Act) the amount of contributions for fringe benefits must be made to a trustee or to a third person irrevocably. The "third person" must be one who is not affiliated with the contractor or subcontractor. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the contractor or subcontractor be able to recapture any of the contributions paid in or any way divert the funds to his own use or benefit. Although contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the contractor or subcontractor of sums which he had paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employees in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employee contributions,

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will be borne by the contractor or subcontractor. In such a case the return by the insurance company to the contractor or subcontractor of sums paid by him in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the contractor or subcontractor, will not be deemed a recapture or diversion by the employer of contributions made pursuant to the plan. (See Report of the Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

§ 5.27 "* * * fund, plan, or program".

The contributions for fringe benefits must be made pursuant to a fund, plan or program (sec. 1(b)(2)(A) of the act). The phrase "fund, plan, or program" is merely intended to recognize the various types of arrangements commonly used to provide fringe benefits through employer contributions. The phrase is identical with language contained in section 3(1) of the Welfare and Pension Plans Disclosure Act. In interpreting this phrase, the Secretary will be guided by the experience of the Department in administering the latter statute. (See Report of Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

§ 5.28 Unfunded plans.

(a) The costs to a contractor or subcontractor which may be reasonably anticipated in providing benefits of the types described in the act pursuant to an enforceable commitment to carry out a financially responsible plan or program, are considered fringe benefits within the meaning of the act (see 1(b)(2)(B) of the act). The legislative history suggests that these provisions were intended to permit the consideration of fringe benefits meeting, among others, these requirements and which are provided from the general assets of a contractor or subcontractor. (Report of the House Committee on Education and Labor, H. Rep. No. 308, 88th Cong., 1st Sess., p. 4.)

(b) No type of fringe benefit is eligible for consideration as a so-called unfunded plan unless:

(1) It could be reasonably anticipated to provide benefits described in the act;

(2) It represents a commitment that can be legally enforced;

(3) It is carried out under a financially responsible plan or program; and

(4) The plan or program providing the benefits has been communicated in writing to the laborers and mechanics affected. (See S. Rep. No. 963, p. 6.)

(c) It is in this manner that the act provides for the consideration of unfunded plans or programs in finding prevailing wages and in ascertaining compliance with the Act. At the same time, however, there is protection against the use of this provision as a means of avoiding the act's requirements. The words "reasonably anticipated" are intended to require that any unfunded plan or program be able to withstand a test which can perhaps be best described as one of actuarial soundness. Moreover, as in the case of other fringe benefits payable under the act, an unfunded plan or program must be "bona fide" and not a mere simulation or sham for avoiding compliance with the act. (See S. Rep. No. 963, p. 6.) The legislative history suggests that in order to insure against the possibility that these provisions might be used to avoid compliance with the act, the committee contemplates that the Secretary of Labor in carrying out his responsibilities under Reorganization Plan No. 14 of 1950, may direct a contractor or subcontractor to set aside in an account assets which, under sound actuarial principles, will be sufficient to meet the future obligation under the plan. The preservation of this account for the purpose intended would, of course, also be essential. (S. Rep. No. 963, p. 6.) This is implemented by the contractual provisions required by § 5.5(a)(1)(iv).

§ 5.29 Specific fringe benefits.

(a) The act lists all types of fringe benefits which the Congress considered to be common in the construction industry as a whole. These include the following: medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, vacation and holiday pay, defrayment of costs of apprenticeship or other similar programs, or other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits.

(b) The legislative history indicates that it was not the intent of the Congress to impose specific standards relating to administration of fringe benefits. It was assumed that the majority of fringe benefits arrangements of this nature will be those which are administered in accordance with requirements of section 302(c)(5) of the National Labor Relations Act, as amended (S. Rep. No. 963, p. 5).

(c) The term "other bona fide fringe benefits" is the so-called "open end" provision. This was included so that new fringe benefits may be recognized by the Secretary as they become prevailing. It was pointed out that a particular fringe benefit need not be recognized beyond a particular area in order for the Secretary to find that it is prevailing in that area. (S. Rep. No. 963, p. 6).

(d) The legislative reports indicate that, to insure against considering and giving credit to any and all fringe benefits, some of which might be illusory or not genuine, the qualification was included that such fringe benefits must be "bona fide" (H. Rep. No. 308, p. 4; S. Rep. No. 963, p. 6). No difficulty is anticipated in determining whether a particular fringe benefit is "bona fide" in the ordinary case where the benefits are those common in the construction industry and which are established under a usual fund, plan, or program. This would be typically the case of those fringe benefits listed in paragraph (a) of this section which are funded under a trust or insurance program. Contractors may take credit for contributions made under such conventional plans without requesting the approval of the Secretary of Labor under § 5.5(a)(1)(iv).

(e) Where the plan is not of the conventional type described in the preceding paragraph, it will be necessary for the Secretary to examine the facts and circumstances to determine whether they are "bona fide" in accordance with requirements of the act. This is particularly true with respect to unfunded plans. Contractors or subcontractors seeking credit under the act for costs incurred for such plans must request specific permission from the Secretary under § 5.5(a)(1)(iv).

(f) The act excludes fringe benefits which a contractor or subcontractor is obligated to provide under other Federal, State, or local law. No credit may be taken under the act for the payments made for such benefits. For example, payment for workmen's compensation insurance under either a compulsory or elective State statute are not considered payments for fringe benefits under the Act. While each situation must be separately considered on its own merits, payments made for travel, subsistence or to industry promotion funds are not normally payments for fringe benefits under the Act. The omission in the Act of any express reference to these payments, which are common in the construction industry, suggests that these payments should not normally be regarded as bona fide fringe benefits under the Act.

§ 5.30 Types of wage determinations.

(a) When fringe benefits are prevailing for various classes of laborers and mechanics in the area of proposed construction, such benefits are includable in any Davis-Bacon wage determination. Illustrations, contained in paragraph (c) of this section, demonstrate some of the different types of wage determinations which may be made in such cases.

(b) Wage determinations of the Secretary of Labor under the act do not include fringe benefits for various classes of laborers and mechanics whenever such benefits do not prevail in the area of proposed construction. When this occurs the wage determination will contain only the basic hourly rates of pay, that is only the cash wages which are prevailing for the various classes of laborers and mechanics. An illustration of this situation is contained in paragraph (c) of this section.

(c) Illustrations:

Classes	Basic hourly rates	Fringe benefits payments				
		Health and welfare	Pensions	Vacations	Apprenticeship program	Others
Laborers	$3.25					
Carpenters	4.00	$0.15				
Painters	3.90	.15	$0.10	$0.20		
Electricians	4.85	.10	.15			
Plumbers	4.95	.15	.20		$0.05	
Ironworkers	4.60			.10		

(It should be noted this format is not necessarily in the exact form in which determinations will issue; it is for illustration only.)

§ 5.31 Meeting wage determination obligations.

(a) A contractor or subcontractor performing work subject to a Davis-Bacon wage determination may discharge his minimum wage obligations for the payment of both straight time wages and fringe benefits by paying in cash, making payments or incurring costs for "bona fide" fringe benefits of the types listed in the applicable wage determination or otherwise found prevailing by the Secretary of Labor, or by a combination thereof.

(b) A contractor or subcontractor may discharge his obligations for the payment of the basic hourly rates and the fringe benefits where both are contained in a wage determination applicable to his laborers or mechanics in the following ways:

(1) By paying not less than the basic hourly rate to the laborers or mechanics and by making the contributions for the fringe benefits in the wage determinations, as specified therein. For example, in the illustration contained in paragraph (c) of § 5.30, the obligations for "painters" will be met by the payment of a straight time hourly rate of not less than $3.90 and by contributing not less than at the rate of 15 cents an hour for health and welfare benefits, 10 cents an hour for pensions, and 20 cents an hour for vacations; or

(2) By paying not less than the basic hourly rate to the laborers or mechanics and by making contributions for "bona fide" fringe benefits in a total amount not less than the total of the fringe benefits required by the wage determination. For example, the obligations for "painters" in the illustration in paragraph (c) of § 5.30 will be met by the payment of a straight time hourly rate of not less than $3.90 and by contributions of not less than a total of 45 cents an hour for "bona fide" fringe benefits; or

(3) By paying in cash directly to laborers or mechanics for the basic hourly rate and by making an additional cash payment in lieu of the required benefits. For example, where an employer does not make payments or incur costs for fringe benefits, he would meet his obligations for "painters" in the illustration in paragraph (c) of § 5.30, by paying directly to the painters a straight time hourly rate of not less than $4.35 ($3.90 basic hourly rate plus 45 cents for fringe benefits); or

(4) As stated in paragraph (a) of this section, the contractor or subcontractor may discharge his minimum wage obligations for the payment of straight time wages and fringe benefits by a combination of the methods illustrated in paragraphs (b)(1) thru (3) of this section. Thus, for example, his obligations for "painters" may be met by an hourly rate, partly in cash and partly in payments or costs for fringe benefits which total not less than $4.35 ($3.90 basic hourly rate plus 45 cents for fringe benefits). The payments in such case may be $4.10 in cash and 25 cents in payments or costs in fringe benefits. Or, they may be $3.75 in cash and 60 cents in payments or costs for fringe benefits.

[30 FR 13136, Oct. 15, 1965]

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§ 5.32 Overtime payments.

(a) The act excludes amounts paid by a contractor or subcontractor for fringe benefits in the computation of overtime under the Fair Labor Standards Act, the Contract Work Hours and Safety Standards Act, and the Walsh-Healey Public Contracts Act whenever the overtime provisions of any of these statutes apply concurrently with the Davis-Bacon Act or its related prevailing wage statutes. It is clear from the legislative history that in no event can the regular or basic rate upon which premium pay for overtime is calculated under the aforementioned Federal statutes be less than the amount determined by the Secretary of Labor as the basic hourly rate (i.e. cash rate) under section 1(b)(1) of the Davis-Bacon Act. (See S. Rep. No. 963, p. 7.) Contributions by employees are not excluded from the regular or basic rate upon which overtime is computed under these statutes; that is, an employee's regular or basic straight-time rate is computed on his earnings before any deductions are made for the employee's contributions to fringe benefits. The contractor's contributions or costs for fringe benefits may be excluded in computing such rate so long as the exclusions do not reduce the regular or basic rate below the basic hourly rate contained in the wage determination.

(b) The legislative report notes that the phrase "contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program" was added to the bill in Committee. This language in essence conforms to the overtime provisions of section 7(d)(4) of the Fair Labor Standards Act, as amended. The intent of the committee was to prevent any avoidance of overtime requirements under existing law. See H. Rep. No. 308, p. 5.

(c)(1) The act permits a contractor or subcontractor to pay a cash equivalent of any fringe benefits found prevailing by the Secretary of Labor. Such a cash equivalent would also be excludable in computing the regular or basic rate under the Federal overtime laws mentioned in paragraph (a). For example, the W construction contractor pays his laborers or mechanics $3.50 in cash under a wage determination of the Secretary of Labor which requires a basic hourly rate of $3 and a fringe benefit contribution of 50 cents. The contractor pays the 50 cents in cash because he made no payments and incurred no costs for fringe benefits. Overtime compensation in this case would be computed on a regular or basic rate of $3.00 an hour. However, in some cases a question of fact may be presented in ascertaining whether or not a cash payment made to laborers or mechanics is actually in lieu of a fringe benefit or is simply part of their straight time cash wage. In the latter situation, the cash payment is not excludable in computing overtime compensation. Consider the examples set forth in paragraphs (c) (2) and (3) of this section.

(2) The X construction contractor has for some time been paying $3.25 an hour to a mechanic as his basic cash wage plus 50 cents an hour as a contribution to a welfare and pension plan. The Secretary of Labor determines that a basic hourly rate of $3 an hour and a fringe benefit contribution of 50 cents are prevailing. The basic hourly rate or regular rate for overtime purposes would be $3.25, the rate actually paid as a basic cash wage for the employee of X, rather than the $3 rate determined as prevailing by the Secretary of Labor.

(3) Under the same prevailing wage determination, discussed in paragraph (c)(2) of this section, the Y construction contractor who has been paying $3 an hour as his basic cash wage on which he has been computing overtime compensation reduces the cash wage to $2.75 an hour but computes his costs of benefits under section 1(b)(2)(B) as $1 an hour. In this example the regular or basic hourly rate would continue to be $3 an hour. See S. Rep. No. 963, p. 7.

PART 6—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS ENFORCING LABOR STANDARDS IN FEDERAL SERVICE CONTRACTS

NOTE: The President's Memorandum of January 29, 1981 (46 FR 11227, Feb. 6, 1981), directed Federal agencies to postpone for sixty days from January 29, 1981, the effective date of all regulations that they had promulgated in final form and had scheduled to become effective during such sixty day period.

Part 6 was revised at 46 FR 4400, Jan. 16, 1981, and the effective date subsequently postponed. For further explanation, see the appendix in the Finding Aids section of this volume.

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AUTHORITY: Sec. 4, 79 Stat. 1035; 5 U.S.C. 301; 41 U.S.C. 353; 86 Stat. 790, 41 U.S.C. 354(a).

SOURCE: 32 FR 6133, Apr. 19, 1967, unless otherwise noted.

§ 6.1 Applicability of rules.

This part provides the rules of practice for administrative proceedings relating to the enforcement of labor standards in the Service Contract Act of 1965 (79 Stat. 1035). See Part 4 of this subtitle.

§ 6.2 Definitions.

As used in this part:

(a) "Hearing examiner" means an administrative law judge appointed as provided in 5 U.S.C. 3105 and Subpart B of Part 930 of Title 5 of the Code of Federal Regulations (see 37 FR 16787) and qualified to preside at hearings under 5 U.S.C. 557.

(b) "Chief Hearing Examiner" means the Chief Administrative Law Judge, U.S. Department of Labor, Washington, D.C. 20210.

(c) "Respondent" means the contractor, subcontractor, or affiliate (in which a contractor or subcontractor is alleged to have a substantial interest) against whom the proceedings are brought.

(d) "The Act" means the Service Contract Act of 1965 as amended (79 Stat. 1034, 86 Stat. 789; 31 U.S.C. 351 et seq.).

(e) "Administrator" means the Deputy Assistant Secretary for Employment Standards in the Employment Standards Administration of the Department of Labor who is also Administrator of the Wage and Hour Division, or his authorized representative as set forth in this part.

(f) "Associate Solicitor in charge of litigation" means the Associate Solicitor for Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20210.

[37 FR 25473, Nov. 30, 1972, as amended at 47 FR 24702, June 8, 1982]

PREHEARING PROCEDURES

§ 6.3 Complaints.

(a) Enforcement proceeding may be instituted by the Deputy Solicitor, or Regional Solicitors/Regional Attorneys by issuing a complaint and causing the complaint to be served upon the respondent.

(b) *Contents.* The complaint shall contain a clear and concise factual statement sufficient to inform the respondent with reasonable definiteness of the acts or practices he is alleged to have committed in violation of the Act or his contractual obligation.

(c) *Amendments.* At any time prior to the close of the hearing, the complaint may be amended in the discretion of the hearing examiner and on such terms as he may approve.

(d) *Notice of hearing.* The hearing examiner shall notify the parties of the time and place for a hearing within 10 days after the service of the complaint.

[32 FR 6133, Apr. 19, 1967, as amended at 43 FR 6944, Feb. 17, 1978]

§ 6.4 Answer.

(a) *Filing and service.* Within 14 days after the service of the complaint, the respondent shall file an answer with the Chief Hearing Examiner. The answer shall be signed by the respondent or his attorney.

(b) *Contents; failure to file.* The answer shall (1) contain a statement of the facts which constitute the grounds of defense, and shall specifically admit, explain, or deny, each of the allegations of the complaint unless the respondent is without knowledge, in which case the answer shall so state; or (2) state that the respondent admits all of the allegations of the complaint. The answer may contain a waiver of hearing. Failure to file an answer to or plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

(c) *Procedure upon admission of facts.* The admission, in the answer or by failure to file an answer, of all the material allegations of fact contained in the complaint shall constitute a waiver of hearing. Upon such admission of facts, the hearing examiner without further hearing shall prepare his decision in which he shall adopt as his proposed findings of fact the material facts alleged in the complaint. The parties shall be given an opportunity to file exceptions to his decision, and to file briefs in support of the exceptions.

§ 6.5 Motions and requests.

Motions or requests shall be filed with the Chief Hearing Examiner, except that those made during the course of the hearing shall be filed with the hearing examiner or shall be stated orally and made part of the transcript. Each motion or request shall state the particular order, ruling, or action desired, and the grounds therefor. The hearing examiner is authorized to rule upon all motions or requests filed or made prior to the filing of his report.

§ 6.6 Consent findings and order.

(a) *General.* At any time after the issuance of a complaint and prior to the reception of evidence in any proceeding, the respondent may move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be in the discretion of the hearing examiner, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) A waiver of any further procedural steps before the hearing examiner and the Administrator; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(1) Submit the proposed agreement to the hearing examiner for his consideration; or

(2) Inform the hearing examiner that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed therefor, the hearing examiner, within 30 days thereafter, shall accept such agreement by issuing his decision based upon the agreed findings.

[32 FR 6133, Apr. 19, 1967, as amended at 36 FR 287, Jan. 8, 1971]

§ 6.7 Prehearing conferences.

(a) Upon his own motion or the motion of the parties, the hearing examiner may direct the parties or their counsel to meet with him for a conference to consider:

(1) Simplification of the issues;

(2) Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitation;

(3) Stipulations, admissions of fact and of contents and authenticity of documents;

(4) Limitation of the number of expert witnesses; and

(5) Such other matters as may tend to expedite the disposition of the proceeding.

(b) The record shall show the matters disposed of by order and by agreement in such pretrial conferences. The subsequent course of the proceeding shall be controlled by such action.

HEARINGS AND RELATED MATTERS

§ 6.8 Appearances.

(a) *Representation.* The parties may appear in person, by counsel, or otherwise.

(b) *Failure to appear.* In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present shall have an election to present his evidence in whole or such portion thereof sufficient to make a prima facie case before the hearing examiner. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the hearing examiner's decision and to file exceptions thereto.

§ 6.9 Hearing.

(a) *Order of proceeding.* Except as may be determined otherwise by the hearing examiner, counsel supporting the complaint shall proceed first at the hearing.

(b) *Evidence*—(1) *In general.* The testimony of witnesses shall be upon oath or affirmation administered by the hearing examiner and shall be subject to such cross-examination as may be required for a full and true disclosure of the facts. The hearing examiner shall exclude evidence which is immaterial, irrelevant, or unduly repetitious.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the hearing examiner may be relied upon subsequently in the proceeding.

(3) *Exceptions.* Formal exception to an adverse ruling is not required.

(c) *Official notice.* Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice and also concerning which the Department by reason of its functions is presumed to be expert: *Provided,* That the parties shall be given adequate notice, at the hearing or by reference in the hearing examiner's decision of the matters so noticed, and shall be given adequate opportunity to show the contrary.

(d) *Transcript.* Hearings shall be stenographically reported. Copies of the transcript may be obtained by the parties upon written application filed with the reporter, and upon the payment of fees at the rate provided in the agreement with the reporter.

DECISION AND ORDER

§ 6.10 Decision of the hearing examiner.

(a) *Proposed findings of fact, conclusions, and order.* Within 10 days after receipt of notice that the transcript of the testimony has been filed or such additional time as the hearing examiner may allow, each party may file with the hearing examiner proposed findings of fact, conclusions of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the hearing examiner.* Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and order, or after submission of an agreement containing consent findings and order, the hearing examiner shall make his decision, which shall become the final decision in the administrative process 20 days after service thereof unless exceptions are filed thereto, as provided in § 6.12. The decision of the hearing examiner shall include a statement of findings and conclusions, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. If the respondent is found to have violated the Act, the hearing examiner in his decision shall make a recommendation to the Secretary of Labor as to whether the respondent should be relieved from the application of the ineligible list as provided in section 5(a) of the Act. If liquidated damages are found due and are unpaid, no recommendation for relief shall be made except on condition that the liquidated damages are paid. The decision shall also include an appropriate order (excluding such issue of ineligibility). The decision of the hearing examiner shall be based upon a consideration of the whole record, including any administrative admissions made under § 6.6. It shall be supported by reliable, probative, and substantial evidence and be made upon the bases of a preponderance of that evidence. Any recommendation that the respondent be relieved by the Secretary of Labor from the ineligible list provision under section 5(a) of the Act as amended shall be supported by a finding of the unusual circumstances, within the meaning of such section, which are relied upon as a reason for the recommendation.

[32 FR 6133, Apr. 19, 1967, as amended at 37 FR 25474, Nov. 30, 1972]

§ 6.11 Exceptions.

Within 20 days after the date of the decision of the hearing examiner, any party aggrieved thereby may file exceptions thereto with supporting reasons. Such party shall transmit his exceptions in writing to the Chief Hearing Examiner, referring to the specific findings of fact, conclusions of law, or order excepted to, the specific pages of transcript relevant to the suggestions, and suggesting corrected findings of fact, conclusions of law, or order.

§ 6.12 Relief from ineligible list.

(a) Application for relief from the ineligible list provisions under section 5(a), of the Act may be filed by the respondent with the Secretary of Labor within 20 days from the date of service of the hearing examiner's decision or Administrator's decision, as the case may be. Notice of the determination of the Secretary on the application of the ineligible list provision of the Act shall be served upon the parties.

(b) Any application filed by respondent for relief from the ineligible list provision shall state the unusual circumstances to be considered by the Secretary of Labor in determining whether to recommend such relief. The Secretary shall forward to the Comptroller General the name of any respondent found in violation of the Act within 90 days after the decision of the hearing examiner, finding such violation, becomes final unless the Secretary within such period decides that relief from the ineligible list provision will be recommended because of unusual circumstances.

[36 FR 287, Jan. 8, 1971, as amended at 37 FR 25474, Nov. 30, 1972]

§ 6.13 Transmission of record.

If exceptions are filed, the hearing examiner shall transmit the record of the proceeding to the Administrator. The record shall include: The pleadings, motions, and requests filed in written form, rulings thereon, the transcript of the testimony and proceeding taken at the hearing, together with the exhibits admitted in evidence, any documents or papers filed in connection with prehearing conferences, such proposed findings of fact, conclusions of law, orders, and supporting reasons, as may have been filed, the hearing examiner's decision, and such exceptions, statements of objections, and briefs in support thereof, as may have been filed in the proceeding.

[36 FR 287, Jan. 8, 1971]

§ 6.14 Decisions and order of the Administrator.

If exceptions to the decision of the hearing examiner are taken as provided in this part, the Administrator shall upon consideration thereof, together with the record references and authorities cited in support thereof, make his decision, which shall affirm, modify, or set aside, in whole or part, the findings, conclusions, and order contained in the decision of the hearing examiner, and shall include a statement of reasons or bases for the actions taken. With respect to the findings of fact, the Administrator shall modify or set aside only those findings that are clearly erroneous. Copies of the decision and order shall be served upon the parties. Any such decision shall treat any question of recommendation for relief from the ineligible list under section 5(a) of the Act to the same extent and subject to the same limitations as provided in § 6.10(b) concerning decisions of the hearing examiner.

[36 FR 287, Jan. 8, 1971]

MISCELLANEOUS

§ 6.15 Service; copies of documents and pleadings.

(a) *Manner of service.* Service upon any party shall be made by the party filing the pleading or document by delivering a copy or mailing a copy to the last known address. If the person upon whom service is made by mail resides 500 miles or more from the party effecting service, such mailing must be by airmail. When a party is represented by an attorney, the service should be upon the attorney.

(b) *Proof of service.* A certificate of the person serving the pleading or other document by personal delivery or by mailing, setting forth the manner of said service shall be proof of the service.

(c) *Service upon Department, number of copies of pleading or other documents.* An original and three copies of all pleadings and other documents shall be filed with the Department of Labor, the original with the officer before whom the case is pending (hearing examiner, chief hearing examiner, Administrator, or the Secretary of Labor) and the copies with the attorney representing the Department during the hearing or the Associate Solicitor in charge of litigation.

[32 FR 6133, Apr. 19, 1967, as amended at 36 FR 287, Jan. 8, 1971]

§ 6.16 Witnesses and fees.

Witnesses subpoenaed by any party shall be paid the same fees and mileage as are paid for like services in the District Court of the United States. The witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

§ 6.17 Depositions.

(a) *When, how, and by whom taken.* For good cause shown, the testimony of any witness may be taken by deposition in any proceeding, when a complaint has been filed, whether at issue or not. Depositions may be taken orally or upon written interrogatories before any person designated by the hearing examiner and having power to administer oaths.

(b) *Application.* Any party desiring to take the deposition of a witness shall make application in writing to the hearing examiner, setting forth the reasons why such desposition should be taken; the time when, the place where, and the name and post office address of the person before whom the deposition is to be taken; the name and address of each witness; and the subject matter concerning which each witness is expected to testify.

(c) *Notice.* Such notice as the hearing examiner shall order shall be given for the taking of a deposition, but this shall not be less than 5 days' written notice when the deposition is to be taken within the United States and not less than 20 days' written notice when the deposition is to be taken elsewhere.

(d) *Taking and receiving in evidence.* Each witness testifying upon deposition shall be sworn, and the adverse party shall have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him, and certified by the officer. Thereafter, the officer shall seal the deposition with two copies thereof, in an envelope and mail the same by registered mail to the hearing examiner. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present or represented at the taking of the deposition or who had due notice thereof. No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance exist at the time of hearing.

§ 6.18 Subpoenas.

All applications for subpoenas ad testificandum and subpoenas duces tecum shall be made in writing to the hearing examiner. Application for subpoenas duces tecum shall specify as exactly as possible the documents to be produced, showing their general relevancy and reasonable scope.

§ 6.19 Hearing examiners.

(a) *Who presides.* All hearings shall be presided over by a hearing examiner appointed under section 11 of the Administrative Procedure Act.

(b) *How assigned.* The presiding hearing examiner shall be designated by the Chief Hearing Examiner.

(c) *Powers.* Hearing examiners shall have all powers necessary to the conduct of fair and impartial hearings, including the following:

(1) To administer oaths and affirmations;

(2) To issue subpoenas upon proper applications as provided in this § 6.18;

(3) To rule upon offers of proof and receive relevant evidence;

(4) To take or cause to be taken depositions and to determine their scope;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel therein;

(6) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) To consider and rule upon procedural requests;

(8) To make and file decisions in conformity with this part;

(9) To take any action authorized by the rules in this part or in conformance with the Administrative Procedure Act.

(d) *Consultation.* The hearing examiner shall not consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate.

(e) *Disqualification of hearing examiners.* (1) When a hearing examiner deems himself disqualified to preside in a particular proceeding, he shall withdraw therefrom by notice on the record directed to the Chief Hearing Examiner.

(2) Whenever any party shall deem the hearing examiner for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, that party shall file with the Chief Hearing Examiner a motion to disqualify and remove such hearing examiner, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. The Chief Hearing Examiner shall rule upon the motion.

(f) *Contemptuous conduct; failure or refusal of a witness to appear or answer.* Contemptuous conduct at any hearing before a hearing examiner shall be ground for exclusion from the hearing. The failure or refusal of a witness to appear at any hearing or to answer any question which has been ruled to be proper shall be ground for the action provided in section 5 of the Act of June 30, 1936 (41 U.S.C. 39) and, in the discretion of the hearing examiner, for striking out all or part of the testimony which may have been given by such witness.

[32 FR 6133, Apr. 19, 1967, as amended at 36 FR 287, Jan. 8, 1971]

§ 6.20 Computation of time.

Saturdays, Sundays, and holidays shall be included in computing the time allowed for filing any document or paper under this part, but when such time expires on such a day, such period shall be extended to include the next following day which is not such a day.

PART 7—PRACTICE BEFORE WAGE APPEALS BOARD

Subpart A—Purpose and Scope

Sec.
7.1 Purpose and scope.

Subpart B—Review of Wage Determinations

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7.14 Oral proceedings.
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7.17 Variations in procedures.
7.18 Motions; extensions of time.

AUTHORITY: Reorg. Plan No. 14 of 1950, 64 Stat. 1267; 5 U.S.C. 301, 3 CFR, 1949-1953 Comp., p. 1007; sec. 2, 48 Stat. 948 as amended; 40 U.S.C. 276c; secs. 104, 105, 76 Stat. 358, 359; 40 U.S.C. 330, 331; 65 Stat. 290; 36 FR 306, 8755.

SOURCE: 36 FR 10863, June 4, 1971, unless otherwise noted.

Subpart A—Purpose and Scope

§ 7.1 Purpose and scope.

(a) This part contains the rules of practice of the Wage Appeals Board (hereinafter referred to as the Board).

(b) The Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from final decisions under Parts 1, 3, and 5 of this subtitle including decisions as to the following: (1) Wage determinations issued under the Davis-Bacon Act and its related minimum wage statutes; (2) debarment cases arising under Part 5 of this subtitle; (3) controversies concerning the payment of prevailing wage rates or proper classifications which involve significant sums of money, large groups of employees, or novel or unusual situations; and (4) recommendations of a Federal agency for appropriate adjustment of liquidated damages which are assessed under the Contract Work Hours and Safety Standards Act.

(c) In exercising its discretion to hear and decide appeals, the Board shall consider, among other things, timeliness, the nature of the relief sought, matters of undue hardship or injustice, or the public interest.

(d) In considering the matters within the scope of its jurisdiction the Board shall act as the authorized representative of the Secretary of Labor. The Board shall act as fully and finally as might the Secretary of Labor concerning such matters.

(e) The Board is an essentially appellate agency. It will not hear matters de novo except upon a showing of extraordinary circumstances. It may remand under appropriate instructions any case for the taking of additional evidence and the making of new or modified findings by reason of the additional evidence.

Subpart B—Review of Wage Determinations.

§ 7.2 Who may file petitions for review.

(a) Any interested person who is seeking a modification or other change in a wage determination under Part 1 of this subtitle and who has requested the administrative officer authorized to make such modification or other change under Part 1 and the request has been denied, after appropriate reconsideration shall have a right to petition for review of the action taken by that officer.

(b) For purpose of this section, the term "interested person" is considered to include, without limitation:

(1) Any contractor, or an association representing a contractor, who is likely to seek or to work under a con-

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tract containing a particular wage determination, or any laborer or mechanic, or any labor organization which represents a laborer or mechanic, who is likely to be employed or to seek employment under a contract containing a particular wage determination, and (2) any Federal, State, or local agency concerned with the administration of a proposed contract or a contract containing a particular wage determination issued pursuant to the Davis-Bacon Act or any of its related statutes.

§ 7.3 Where to file.

The petition (original and four copies) accompanied by a statement of service shall be filed with the Wage Appeals Board, U.S. Department of Labor, Washington, D.C. 20210. In addition, copies of the petition shall be served upon each of the following: (a) The Federal, State, or local agency, or agencies involved; (b) the officer issuing the wage determination; and (c) any other person (or the authorized representatives of such persons) known, or reasonably expected, to be interested in the subject matter of the petition.

§ 7.4 When to file.

(a) Requests for review of wage determinations must be timely made. Timeliness is dependent upon the pertinent facts and circumstances involved, including without limitation the contract schedule of the administering agency, the nature of the work involved, and its location.

(b) The Board shall under no circumstances request any administering agency to postpone any contract action because of the filing of a petition. This is a matter which must be resolved directly with the administering agency by the petitioner or other interested person.

§ 7.5 Contents of petitions.

(a) A petition for the review of a wage determination shall: (1) Be in writing and signed by the petitioner or his counsel (or other authorized representative); (2) be described as a petition for review by the Wage Appeals Board; (3) identify clearly the wage determination, location of the project or projects in question, and the agency concerned; (4) state that the petitioner has requested reconsideration of the wage determination in question and describe briefly the action taken in response to the request; (5) contain a short and plain statement of the grounds for review; and (6) be accompanied by supporting data, views, or arguments.

(b) A petition shall indicate whether or not the petitioner consents to the disposition of the questions involved by a single member of the Board.

§ 7.6 Filing of wage determination record.

(a) In representing the officer issuing the wage determination the Solicitor shall, among other things, file promptly with the Board a record supporting his findings and conclusions, after receipt of service of the petition.

(b) In representing the officer issuing the wage determination the Solicitor shall file with the Board a statement of the position of the officer issuing the wage determination concerning any findings challenged in the petition; and shall make service on the petitioner and any other interested persons.

§ 7.7 Presentations of other interested persons.

Interested persons other than the petitioner shall have a reasonable opportunity as specified by the Board in particular cases to submit to the Board written data, views, or arguments relating to the petition. Such matter (original and four copies) should be filed with the Wage Appeals Board, U.S. Department of Labor, Washington, D.C. 20210. Copies of any such matter shall be served on the petitioner and other interested persons.

§ 7.8 Disposition by the Wage Appeals Board.

(a) The Board may decline review of any case whenever in its judgement a review would be inappropriate or because of lack of timeliness, the nature of the relief sought, or other reasons.

(b) The Board shall decide the case upon the basis of all relevant matter contained in the entire record before it. The Board shall notify interested persons participating in the proceeding of its decision.

(c) Decisions of the Board shall be by majority vote. A case will be reviewed upon the affirmative vote of one member.

Subpart C—Review of Other Proceedings and Related Matters

§ 7.9 Review of decisions in other proceedings.

(a) Any party or aggrieved person shall have a right to file a petition for review with the Board (original and four copies), within a reasonable time from any final decision in any agency action under Part 1, 3, or 5 of this subtitle.

(b) The petition shall state concisely the points relied upon, and shall be accompanied by a statement setting forth supporting reasons. Further, the petition shall indicate whether or not the petitioner consents to the disposition of the questions involved by a single member.

(c) A copy of the presentation shall be served upon the officer who issued the decision, and upon any other party or known interested person, as the case may be. In representing the officer who issued the final decision in any agency action under Parts 1, 3, or 5 of the subtitle, the Solicitor shall, among other things, file promptly with the Board a record supporting the officer's decision, including any findings upon which the decision is based, after receipt of service of the petition.

(d) In representing the officer issuing a final decision in any agency action under Parts 1, 3, and 5 of this subtitle, the Solicitor shall file with the Board a statement of the position of the officer who issued the final decision at issue, concerning the decision challenged; and shall make service on the petitioner and any other interested persons.

(e) The Board shall afford any other parties or known interested persons a reasonable opportunity to respond to the petition. Copies of any such response shall be served upon the officer issuing the decision below and upon the petitioner.

(f) The Board shall pass upon the points raised in the petition upon the basis of the entire record before it, and shall notify the parties to the proceeding of its decision. In any remand of a case as provided in § 7.1(e), the Board shall include any appropriate instructions.

Subpart D—Some General Procedural Matters

§ 7.11 Right to counsel.

Each interested person or party shall have the right to appear in person or by or with counsel or other qualified representative in any proceeding before the Board.

§ 7.12 Intervention; other participation.

For good cause shown, the Board may permit any interested person or party to intervene or otherwise participate in any proceeding held by the Board. Except when requested orally before the Board, a petition to intervene or otherwise participate shall be in writing (original and four copies) and shall state with precision and particularity: (a) The petitioner's relationship to the matters involved in the proceedings, and (b) the nature of the presentation which he would make. Copies of the petition shall be served to all parties or interested persons known to participate in the proceeding, who may respond to the petition. Appropriate service shall be made of any response.

§ 7.13 Consolidations.

Upon its own initiative or upon motion of any interested person or party, the Board may consolidate in any proceeding or concurrently consider two or more appeals which involve substantially the same persons or parties, or issues which are the same or closely related, if it finds that such consolidation or concurrent review will contribute to a proper dispatch of its business and to the ends of justice, and it will not unduly delay consideration of any such appeals.

§ 7.14 Oral proceedings.

(a) With respect to any proceeding before it, the Board may upon its own initiative or upon request of any interested person or party direct the interested persons or parties to appear before the Board or its designee at a specified time and place in order to simplify the issues presented or to take up any other matters which may tend to expedite or facilitate the disposition of the proceeding.

(b) In its discretion, the Board, or a single presiding member, may permit oral argument in any proceeding. The Board or the presiding member, shall prescribe the time and place for argument and the time allotted for argument. A petitioner wishing to make oral argument should make the request therefor in his petition.

§ 7.15 Public information.

(a) Subject to the provisions of §§ 1.15, 5.6, and Part 70 of this subtitle, all papers and documents made a part of the official record in the proceedings of the Board and decisions of the Board shall be made available for public inspection during usual business hours at the office of the Wage Appeals Board, U.S. Department of Labor, Washington, D.C. 20210.

(b) Facsimile copies of such papers, documents and decisions shall be furnished upon request. There shall be a charge of 25 cents for each facsimile page reproduction except for copies of materials duplicated for distribution for no charge as provided in paragraph (c). Postal fees in excess of domestic first class postal rates as are necessary for transmittal of copies will be added to the per-page fee specified unless stamps or stamped envelopes are furnished with the request.

(c) No charge need to be made for furnishing: (1) Unauthenticated copies of any rules, regulations, or decisions of general import, (2) copies to agencies which will aid in the administration of the Davis-Bacon and related acts, (3) copies to contractor associations and labor organizations for general dissemination of the information contained therein, and (4) only occasionally unauthenticated copies of papers and documents.

§ 7.16 Filing and service.

(a) *Filing.* All papers submitted to the Board under this part shall be filed with the Executive Secretary of the Wage Appeals Board, U.S. Department of Labor, Washington, D.C. 20210.

(b) *Number of copies.* An original and four copies of all papers shall be submitted.

(c) *Manner of service.* Service under this part shall be by the filing party or interested person, service may be personal or may be by mail. Service by mail is complete on mailing.

(d) *Proof of service.* Papers filed with the Board shall contain an acknowledgement of service by the person served or proof of service in the form of a statement of the date and the manner of service and the names of the person or persons served, certified by the person who made service.

§ 7.17 Variations in procedures.

Upon reasonable notice to the parties or interested persons, the Board may vary the procedures specified in this part in particular cases.

§ 7.18 Motions; extensions of time.

(a) Except as otherwise provided in this part, any application for an order or other relief shall be made by motion for such order or relief. Except when made orally before the Board, motions shall be in writing and shall be accompanied by proof of service on all other parties or interested persons. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. Any party or interested person, as the case may be, may respond to the motion within such time as may be provided by the Board.

(b) Requests for extensions of time in any proceeding as to the filing of papers or oral presentations shall be in the form of a motion under paragraph (a) of this section.

PART 11—DEPARTMENT OF LABOR NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE PROCEDURES

Subpart A—General Provisions

Sec.
11.1 Purpose and scope.
11.2 Applicability.

Sec.
11.3 Responsible agency officials.

Subpart B—Administrative Procedures

11.10 Identification of agency actions.
11.11 Development of environmental analyses and documents.
11.12 Content and format of environmental documents.
11.13 Public participation.
11.14 Legislation.

AUTHORITY: NEPA, (42 U.S.C. 4321 *et seq.*), Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977) and Council on Environmental Quality Regulations (National Environmental Policy Act, Implementation of Procedural Provisions) 40 CFR Parts 1500-1508 (43 FR 55978).

SOURCE: 45 FR 51188, Aug. 1, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 11.1 Purpose and scope.

(a) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) directs that, "to the fullest extent possible, * * * the policies, regulations and public laws of the United States shall be interpreted and administered in accordance with the policies set forth" in the Act for the preservation of the environment. As a means for achieving this objective, Executive Order 11991 of May 24, 1977 (amending E.O. 11514 of March 5, 1970) directed the Council on Environmental Quality (CEQ) to issue uniform regulations for implementation of NEPA by all Federal agencies. These regulations were published in final form on November 29, 1978 (43 FR 55978) as 40 CFR Parts 1500-1508. The CEQ's NEPA regulations require that each Federal agency adopt implementing procedures to supplement their regulations (40 CFR 1507.3). Accordingly, the purpose of this part is to prescribe procedures to be followed by Department of Labor agencies when such agencies are contemplating actions which may be subject to the requirements of NEPA. These regulations do not replace 40 CFR Parts 1500-1508; rather they are to be read together with, and as a supplement to, the CEQ's regulations.

(b) It is the responsibility of each agency to comply with the policies set forth in NEPA to the fullest extent possible and consistent with its statutory authority. Each agency shall comply with all applicable requirements of this part except where compliance would be inconsistent with other statutory requirements. However, no trivial violation of, or noncompliance with, these procedures shall give rise to an independent cause of action (cf. 40 CFR 1500.3 and 1507.3(b)).

§ 11.2 Applicability.

Although all Department of Labor agencies are subject to NEPA, only three of its agencies routinely propose or consider actions which may require the preparation of environment assessments or environmental impact statements. These are the Occupational Safety and Health Administration (OSHA), which acts pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651, *et seq.*); the Mine Safety and Health Administration (MSHA), which acts pursuant to the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801, *et seq.*); and the Employment and Training Administration (ETA) (through one of its major programs, the Job Corps) which purchases and leases land and constructs Job Corps centers pursuant to the Comprehensive Employment and Training Act (29 U.S.C. 801, *et. seq.*). Therefore, these procedures have been designed primarily with the duties and rulemaking processes of these agencies in mind. If and when other Department of Labor agencies propose actions requiring environmental impact analyses, they shall use these procedures, to the extent that they are applicable, in performing such analyses.

§ 11.3 Responsible agency officials.

(a) The Assistant Secretary of Labor for Policy, Evaluation and Research (ASPER) shall be responsible for the following:

(1) Overall review of Department of Labor agency compliance with the requirements of NEPA, the CEQ's regulations and these Departmental procedures;

(2) Maintaining contacts with CEQ and the Environmental Protection Agency (EPA) as the Departmental NEPA liaison; and

(3) Preparing and coordinating Departmental comments in response to environmental impact statements prepared by other Federal agencies which have been submitted to the Department for review, as required by 40 CFR 1503.2.

(b) Assistant Secretaries of Labor and other officials of equivalent rank or responsibility (hereinafter "agency heads") shall be responsible for their agencies' compliance with NEPA.

(1) These responsibilities shall include the following:

(i) Assuring that the agencies under their control observe the requirements of 40 CFR 1507.2 on compliance capability;

(ii) Preparing environmental impact assessments and statements in accordance with the requirements of these regulations and 40 CFR Parts 1501 and 1502, and advising private applicants, or other non-Federal entities, of the possible need for information foreseeably required for later Federal action pursuant to 40 CFR 1501.2(d);

(iii) Assuring public participation in the NEPA process in accordance with 40 CFR Parts 1503 and 1506;

(iv) Commenting on environmental impact statements prepared by other agencies, when their agencies have jurisdiction by law or special expertise with respect to any environmental impacts connected with a proposed action, as required by 40 CFR Part 1503;

(v) Assuring that environmental documents prepared by their agencies accompany proposed actions through existing agency review processes, and that, along with other relevant materials, and consistent with 40 CFR 1505.1(e), the full range of alternatives discussed in these documents are considered in the planning of agency actions and in the making of decisions and that the alternatives considered are encompassed by those discussed in the documents; and

(vi) Assuring, where possible, the mitigation of adverse environmental effects of agency actions.

(2) In accordance with 40 CFR 1506.5(c), agency heads will also be responsible for assuring the quality of environmental impact statements prepared by their agencies. Where environmental impact statements will be prepared by a contractor, the agency heads will assure that their agencies furnish guidance to the contractor, participate in the document's preparation, independently evaluate the statement prior to approval and take responsibility for the scope and contents.

(c) Agency heads may designate program offices or individuals as NEPA contacts for their agencies. The name and address of the NEPA contact shall be included on the cover sheet of each environmental document published by the agency, or if no cover sheet is provided, the name and address of this office or individual shall be included with any instructions to the public on obtaining further information or submitting comments on the document.

(1) It shall be the duty of an agency's NEPA contact to know the status of all environmental documents being prepared by the agency or in cooperation with another agency.

(2) The NEPA contact shall receive and respond to inquiries concerning the status of all environmental documents being prepared within the agency or in cooperation with another agency.

Subpart B—Administrative Procedures

§ 11.10 Identification of agency actions.

Pursuant to the CEQ definition of "major Federal action" (40 CFR 1508.18) and 40 CFR 1507.3(b)(2), the following paragraphs identify and classify Department of Labor actions which: normally will not require preparation of an environmental document (i.e. an environmental assessment or an environmental impact statement); or usually will require preparation of an environmental document.

(a) *OSHA/MSHA actions.* Actions of the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA) are classified as follows:

(1) *Categorically excluded actions.* OSHA/MSHA actions listed in the following Table will normally qualify for categorical exclusion from NEPA requirements: i.e., such actions do not require preparation of either an environmental assessment or an environmental impact statement, because they do not have a significant impact on the quality of the human environment. Classification as a categorical exclusion, however, does not prohibit OSHA or MSHA from preparing an environmental assessment or environmental impact statement on any of the following actions when OSHA or MSHA determines it to be appropriate. Also, in extraordinary circumstances where a normally excluded action is found to have a potentially significant environmental effect, OSHA or MSHA shall prepare an environmental assessment and/or an environmental impact statement as required.

OSHA/MSHA Categorical Exclusions

Type of action	Reason for exclusion
(i) Promulgation, modification or revocation of any safety standard. Examples of these actions are: machine guarding requirements, safety lines, warning signals, etc.	Safety standards promote injury avoidance by means of mechanical applications or work practices, the effects of which do not impact on air, water or soil quality, plant or animal life, the use of land or other aspects of the human environment.
(ii) Approval of petitions for variances from MSHA/OSHA safety standards or OSHA health standards.	Variances are taken from existing standards. Thus environmental documents, as appropriate, will already have been prepared. In terms of worker health and safety, any variance must be at least as effective as the original standard.
(iii) Agency legislative requests for appropriations.	Exempted by 40 CFR 1508.17.
(iv) Recordkeeping and reporting requirements.	No possibility of significant environmental impact.
(v) Routine agency personnel actions.	Such actions typically involve small numbers of individuals and have no possibility of significant environmental impact.
(vi) Training of employers, employees, agency personnel and others in the recognition, avoidance or abatement of occupational hazards. Providing consultative services to industry.	These actions involve educational activities which have no possibility of significant environmental impact.
(vii) Enforcement proceedings.	Exempted by 40 CFR 1508.18.
(viii) Equipment approvals	No possibility of significant environmental impact.
(ix) State grants under Sec. 503 of the Federal Mine Safety and Health Act.	These grants assist States in developing and implementing laws to improve mine safety and health and to promote coordination between State and Federal governments. They have no possibility of significant environmental impact.
(x) Certification or qualification proceedings.	No possibility of significant environmental impact.

(2) *Actions requiring environmental assessment.* Several classes of OSHA/MSHA actions normally require the preparation of an environmental assessment prior to determining whether either a finding of no significant impact or an environmental impact statement must be prepared. (However, OSHA or MSHA may proceed to prepare an environmental impact statement, without first preparing an environmental assessment, if it determines such action to be appropriate or necessary, as provided by 40 CFR 1501.3(a)). Actions in this classification include:

(i) Promulgation, modification or revocation of a health standard; and

(ii) Approval or revocation of State plans for the enforcement of safety and health standards (not applicable to MSHA).

(3) *Actions requiring preparation of an environmental impact statement.* Preparation of an environmental impact statement will always be required for proposals for promulgation, modification or revocation of health standards which will significantly affect air, water or soil quality, plant or animal life, the use of land or other aspects of the human environment.

(4) *Emergency temporary standards.* Situations requiring the issuance of emergency temporary standards (issued for a period of up to six months, pursuant to Sec. 6(c) of the Occupational Safety and Health Act of 1970, and for a period of up to nine months, pursuant to Sec. 101(b) of the Federal Mine Safety and Health Act of 1977) are of such nature that the

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provisions of 40 CFR Parts 1500 *et seq.* may not be strictly observable. Pursuant to 40 CFR 1506.11, however, OSHA and MSHA will consult with the Council on Environmental Quality in connection with such situations, and will, in any event, prepare environmental assessments or environmental impact statements, as appropriate, on any proposed permanent regulation to be promulgated for the purpose of replacing the temporary action.

(b) *Real property actions.* Actions that will involve construction, or the purchase or lease of property, in connection with the establishment or substantial alteration of a Job Corps center, of any similar Job Corps facility, or other property actions of a similar character by another agency, will normally require the preparation of an environmental assessment prior to determining whether either a finding of no significant impact or an environmental impact statement must be prepared.

(c) *Other Departmental actions.* Certain actions taken to implement other Department of Labor programs will normally qualify for categorical exclusion from NEPA requirements. These matters are excluded because the possibility of environmental impact is remote. However, classification as a categorical exclusion does not prohibit or release an agency from preparing an environmental assessment or environmental impact statement when the agency determines it to be appropriate. These actions include:

(1) U.S. Employment Service activities and related placement, counseling, recruitment, information, testing, certification and associated actions;

(2) Apprenticeship activities and related certification and technical assistance actions;

(3) Training activities, other than Job Corps, including work experience, classroom training and public service employment;

(4) Unemployment insurance, trade adjustment assistance, workers' compensation programs, retirement programs, employee protection programs, and related employees benefit programs or activities involving the replacement or regulation of employee wages;

(5) Wage and hour programs to protect low-income workers, eliminate discriminatory employment practices, prevent curtailment of employment and earnings for certain groups of workers, minimize loss of income due to indebtedness, protect farm and migrant labor and related activities;

(6) Contract compliance programs to ensure equal employment opportunity and related actions;

(7) Labor-management relations activities and activities of labor organizations, employers and their officers or representatives;

(8) Research, evaluation, development and information collection projects related to any of the aforementioned activities;

(9) Labor statistics programs; and

(10) Matters involving personnel policy, procurement policy, freedom of information and privacy policy, and related matters of Departmental management.

§ 11.11 Development of environmental analyses and documents.

(a) Potential environmental effects of agency actions shall begin to be examined at the time a topic for potential action is submitted to the agency staff for research, proposal development, or other consideration. During this stage the agency shall determine whether the type of action which may be proposed may be categorically excluded from NEPA environmental analysis requirements pursuant to § 11.10. If the type of action being considered is not categorically excluded, or is an extraordinary case of a normally excluded action which may have significant environmental impacts, development of the information needed to make an environmental assessment shall begin. Actions described in § 11.10(b) shall be submitted to the Assistant Secretary for Administration and Management at this point, pursuant to applicable Departmental procedures, for appropriate review, including a determination with respect to whether or not the action is located in or near a floodplain or wetlands area in connection with the requirements of Executive Orders 11988 and 11990.

(b) When information gathered during the early stages of proposal development indicates that preparation of an environmental impact statement will be required, the agency shall begin preparation of such a document by initiating the scoping process in accordance with 40 CFR 1501.7. However, if the information is not clearly indicative of the need for preparation of an environmental impact statement, an environmental assessment shall be prepared.

(c) Agencies are encouraged, in developing environmental assessments, to explore all factors which it may become necessary to examine should it be determined that preparation of an environmental impact statement is necessary, even though some of those factors, such as economic and social effects, "are not intended by themselves to require preparation of an environmental impact statement" (40 CFR 1508.14). Thus in making environmental assessments of real property actions described in § 11.10(b), agencies are encouraged to consider the following factors, among others:

(1) The nature and degree of any former use of a proposed facility and the number of individuals the facility formerly served, as compared with its use and population to be served under the new proposal;

(2) The population of the area (numbers, density and makeup);

(3) Community facilities and services, taking into consideration capacity and present and former use, including: health services (hospitals, physicians), business and community development policy, recreational facilities (parks, theaters), fire and police protection, schools, energy resources, waste disposal, water, traffic and roadway systems, sewage systems, communications, and public transportation;

(4) The proximity of the facility to residential areas;

(5) The potential impact on the quality of drinking water, air quality, noise levels, designated scenic areas, land use, soil quality (including drainage or erosion problems), buildings valued for their design or which are otherwise locally significant, the listing or eligibility for listing of a site in the National Register for Historic places, consistent with the requirements of 20 CFR 684.24a where applicable, neighborhood character, and health and safety of residents;

(6) The potential impact on natural systems and resources including rivers and streams, forests, wetlands, floodplains, wilderness areas or places, and species designated for preservation, including species of plants and animals and their critical habitats as identified in regulations published by the Secretary of the Interior (50 CFR Chapter I, Part 17), and by the Secretary of Commerce (50 CFR Chapter II, Parts 217, 222.23, 223, and 227.4); and

(7) Other considerations appropriate in light of the nature and size of the project.

(d) If an agency determines, on the basis of an environmental assessment, that preparation of an environmental impact statement is not required, notice of a finding of no significant impact and the availability of the environmental assessment shall be prepared and published in the FEDERAL REGISTER. In the case of proposed rulemaking, the notice of a finding of no significant impact may be published in the FEDERAL REGISTER at any time prior to the publication of the proposed action, or it may be included in the FEDERAL REGISTER notice of proposed rulemaking. Issuance of a finding of no significant impact at the proposal stage of rulemaking shall not foreclose further consideration of environmental issues during the rulemaking proceedings. Therefore the Department of Labor notes that, consistent with 40 CFR 1500.3, the finding shall not be considered final until promulgation of the rule involved (the action affecting the environment).

(1) If it is determined that preparation of an environmental impact statement is not required for an action, but that action is one which would normally require the preparation of an environmental impact statement, an action closely similar to one which would normally require the preparation of an environmental impact statement, or an action without precedent in this regard, the agency shall make a preliminary finding of no significant impact available for public review and comment. In accordance with 40 CFR

1501.4(e)(2), this finding shall be made available for at least 30 days before a final determination is made as to whether an environmental impact statement will be prepared, and before any public record may be closed and the proposed action may become effective.

(2) Although not required by 40 CFR 1501.4(e)(2), an agency may use the procedure described in § 11.11(d)(1) whenever the agency determines it to be appropriate.

(e) If it is determined on the basis of an environmental assessment, prepared in connection with an action described in § 11.10(b), that preparation of an environmental impact statement is required, or that public review is required in connection with actions in floodplains or wetlands that do not require environmental impact statements under E.O. 11988 or E.O. 11990, the agency shall consider altering the proposed action or changing the site of the proposed project, and shall proceed with preparation of an environmental impact statement or appropriate public review actions only after obtaining written authorization from the Assistant Secretary for Administration and Management.

(f) Filing of any draft environmental impact statement with the Environmental Protection Agency (EPA), pursuant to 40 CFR 1506.9, and circulation to the public, will ordinarily coincide with publication of the proposed agency action, which is the subject of that document, in the FEDERAL REGISTER. In any event, the statement will be made available for public comment for at least a 45-day period.

(g) The final decision on the proposed action shall be made not earlier than 90 days following publication of EPA's notice of the filing of the draft environmental impact statement, and, except as provided below, not earlier than 30 days following publication of EPA's notice of the filing of the final environmental impact statement.

(1) In accordance with 40 CFR 1506.10, an agency engaged in rulemaking under the Administrative Procedure Act or other statute, for the purpose of protecting the public health or safety, may waive the 30-day time period noted above and publish a decision on a final rule simultaneously with publication of the notice of the availability of the final environmental impact statement. Therefore, Departmental agencies (such as OSHA and MSHA) meeting these requirements, may file and circulate the final environmental impact statement at the same time a notice of decision is being published, provided that the final rule or action may not become effective for at least 30 days from the date of publication of the EPA's notice of filing of the final environmental impact statement.

(2) If a supplement to a final environmental impact statement is prepared, it shall be incorporated into the rulemaking record. If the supplement is prepared following the close of the rulemaking record and is based on, or introduces, new data or major new alternatives or analyses, the rulemaking record will be reopened for at least 30 days to receive public comments. The final action may not become effective for at least 30 days following EPA publication of the filing of the supplemental statement.

(h) In accordance with 40 CFR 1505.2, when an agency prepares a final environmental impact statement, the agency shall prepare a concise public record of decision detailing what the decision was, what alternatives were considered (specifying the environmentally preferable alternative), how those considerations entered into the decision, and whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, the reason they were not. This record may be contained in, or integrated with, the preamble to the FEDERAL REGISTER notice of final action or in any other public document considered appropriate by the agency.

§ 11.12 Content and format of environmental documents.

(a) An environmental assessment may be prepared in any format considered effective by the agency involved. When such a document is prepared in connection with a proposed action, it must be made readily available to the public either by placement into the public record (with public notice provided in accordance with 40 CFR Part 1506) or by publication in the FEDERAL REGISTER. The preamble to the FEDERAL REGISTER notice of proposed rulemaking may be considered the environmental assessment provided that the document contains the elements required by 40 CFR 1508.9(b).

(b) A finding of no significant impact (40 CFR 1508.13) may be prepared in any format considered to be effective or necessary by the agency involved in the proposed action.

(c) The finding of no significant impact, and the environmental assessment on which it was based, as well as any comments received in response to these documents shall be included in the public record of the proposed action.

(d) Department of Labor agencies shall comply with the format requirements for environmental impact statements as set forth at 40 CFR 1502.10, except when an agency determines that there is a compelling reason to do otherwise, such as more effective communication or reduced duplication of effort and paperwork (40 CFR 1506.4). For example, in OSHA/MSHA informal rulemaking proceedings, environmental documents may be combined with the FEDERAL REGISTER notice of proposed or final rulemaking. Filing and circulation of the combined preamble/environmental document shall be in accordance with the requirements of 40 CFR 1506.9.

(e) The final environmental impact statement shall contain any changes in information or supplemental information received since the filing and circulation of the draft environmental impact statement, as well as a summary, or copies of the substantive comments received in response to the draft environmental impact statement. If such changes and comments are minor, an agency may circulate only the changes and comments, including responses to the comments, rather than the entire impact statement, to the extent permitted by 40 CFR 1502.19. However, the entire document, with a new cover sheet, shall be filed with EPA and placed in the rulemaking record.

§ 11.13 Public participation.

(a) When an agency has determined that preparation of an environmental impact statement is required, the agency shall publish a notice of intent to prepare an environmental impact statement in the FEDERAL REGISTER and shall invite public participation in the agency's scoping process as required by 40 CFR 1501.7.

(b) When the draft environmental impact statement has been prepared and filed with the EPA pursuant to § 11.11(f), comments on the document shall be solicited from appropriate Federal, State and local agencies, Indian tribes, and other persons or organizations who may be interested or affected, as required by 40 CFR 1503.1.

(c) In the case of an action with effects primarily of local concern, agencies shall consider the use of clearinghouses, newspapers and other public media likely to generate local participation in the agency process as ways of supplementing the notices otherwise specified in this Part. The use of such public media does not, however, require or authorized the use of paid advertising.

§ 11.14 Legislation.

Notwithstanding any provisions of this part, environmental assessments or impact statements prepared in connection with requests for new legislation or modification of existing statutes shall be handled in accordance with applicable OMB and Department of Labor procedures on the preparation and submission of legislative proposals and the requirements of 40 CFR 1506.8.

PART 12—FINANCIAL ASSISTANCE TO PERSONS DISPLACED FROM THEIR HOMES, BUSINESSES AND FARMS BY GOVERNMENTAL ACQUISITION OF REAL PROPERTY

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AUTHORITY: 84 Stat. 1894; 42 U.S.C. 4601 et seq.

SOURCE: 36 FR 23361, Dec. 9, 1971, unless otherwise noted.

Subpart A—General

§ 12.1 Purpose.

(a) This part prescribes policies and procedures for the U.S. Department of Labor in implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894, 42 U.S.C. 4601 (hereinafter called the Act), and are applicable to all acquisitions or displacements occurring on or after January 2, 1971. The Act provides for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and establishes uniform and equitable land acquisition policies for Federal and federally assisted programs.

(b) The provisions contained in this part are based upon consideration of the following:

(1) House Report No. 91-1656, A Report to Accompany S.1, Committee on Public Works, House of Representatives, 91st Congress, second session, December 2, 1970; and

(2) Provisions of existing law, including but not limited to, title VIII of the Civil Rights Act of 1968 (Public Law 90-284), and principles of equity, including but not limited to, good faith and reasonableness.

§ 12.2 Secretary.

As used in the part "Secretary" means the Secretary of Labor, U.S. Department of Labor, or his authorized representatives. Such representatives shall include Assistant Secretaries or other officials responsible for the project which requires land acquisition or displacement, and any individual authorized to act for them in implementing the regulations in this part.

§ 12.3 General instructions.

(a) Officials responsible for programs under this Act shall give written notice of displacement to each individual family, business, or farm to be displaced. Such notice shall be served personally or by first-class mail.

(b) In order to qualify for benefits under this Act as a displaced person, either of two conditions must be fulfilled:

(1) The person must have received a written notice to vacate which notice may be given before or after initiation of negotiations for acquisition of the property as prescribed by regulations issued by the Department; or

(2) The subject real property must in fact have been acquired, and the person must have moved as a result of its acquisition.

(c) Multiple occupancy shall be treated as single occupancy in the case of individuals, not families, in regulations and procedures dealing with benefits for replacement housing. However, each individual displaced may receive benefits authorized under section 202(a) of the Act and in the case of families each family shall be considered separately.

(d) For real property acquisitions under Federal law, contracts or options to purchase real property shall not incorporate payments for relocation costs and related items in title II of the Act. Appraisers shall not give consideration to or include in their appraisals any allowances for the benefits provided by title II of the Act. In the event of condemnation with a declaration of taking, the estimated compensation shall be determined solely on the basis of the appraised value of the real property with no consideration being given to or reference contained there in to the payments to be made under title II of the Act.

§ 12.4 Solicitor.

The Solicitor of Labor or his authorized representative will provide legal advice and assistance to the Secretary with regard to questions regarding the application or interpretation of this part and the resolution of disputes concerning claims for benefits arising pursuant to the Act.

Subpart B—Assurance of Adequate Replacement Housing Prior to Displacement

§ 12.10 Determination.

In the implementation of sections 205(c)(3) and 206(b) of the Act, the following criteria shall be observed:

(a) *Availability.* The Secretary shall not proceed with the phase of any project or authorize a State agency to proceed with the phase of any project which phase will cause the displacement of any person until he has determined, or received satisfactory assurance from the displacing State agency, that within a reasonable period of time prior to displacement, there will be available on a basis consistent with the requirements of title VIII of the Civil Rights Act of 1968 (Public Law 90-284), in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means (including supplements provided by law) of the families and individuals displaced, decent, safe, and sanitary dwellings, as described in paragraph (d) of this section, equal in number to the number of, and available to, such displaced persons who require such dwellings reasonably accessible to their places of employment.

(b) *Support.* This determination or assurance shall be based on a current survey and analysis of available replacement housing, by the displacing agency. Such survey and analysis must take into account the competing demands on available housing.

(c) *Waiver.* The Secretary may, upon making findings of emergency or other extraordinary situations where immediate possession of real property is of crucial importance, waive the requirements of paragraphs (a) and (b) of this section, as authorized by section 205(c)(3) of the Act. Determination so made shall be included in the annual report required by section 214 of the Act.

(d) *Decent, safe, and sanitary housing.* A decent, safe, and sanitary dwelling is one which is found to be in sound, clean and weather-tight condition, and which meets local housing codes. The following criteria shall be considered in determining if a dwelling unit is decent, safe, and sanitary. Adjustments may only be made in the case of unusual or unique geographical areas or circumstances.

(1) *Housekeeping unit.* A housekeeping unit must include a kitchen with fully usable sink; a stove, or connections for same; a separate complete bathroom; hot and cold running water in both the bath and the kitchen; an adequate and safe wiring system for lighting and other electrical services; and heating as required by climatic conditions and local codes.

(2) *Nonhousekeeping unit.* A nonhousekeeping unit is one which meets local code standards for boarding houses, hotels, or other congregate living. If local codes do not include requirements relating to space and sanitary facilities, standards will be subject to the approval of the Department.

(3) *Occupancy standards.* Occupancy standards for replacement housing shall comply with agency approved occupancy requirements or comply with local codes.

(4) *Facilities.* A dwelling unit meeting the physical and occupancy standards stated above, shall only be considered as suitable replacement housing when it is reasonably convenient to such community facilities as schools, stores, and public transportation.

(e) *Absence of local standards.* In those instances where there is no local housing code or a local housing code does not contain certain minimum standards or the standards are inadequate, the Department will establish the standards.

§ 12.11 Housing provided as a last resort.

In determining when it is necessary to take action to construct replacement housing as authorized by section 206(a) of the Act the Secretary will be guided by criteria and procedures developed by the Secretary of Housing and Urban Development.

§ 12.12 Loans for planning and preliminary expenses.

The Secretary will be guided by criteria and procedures for implementing section 215 of the Act concerning loans for planning and other preliminary expenses for additional housing as are developed by the Secretary of Housing and Urban Development.

Subpart C—Moving and Related Expenses

§ 12.20 Actual reasonable expenses in moving.

In the implementation of section 202(a) of the Act, the following provisions shall serve as guides:

(a) There shall be allowed:

(1) The cost of transportation of individuals, families, and property from acquired site, including storage, to the replacement site, not to exceed a distance of 50 miles, except where the displacing agency determines that relocation beyond the 50-mile area is justified.

(2) The cost of packing and crating of personal property.

(3) The cost of advertising for packing, crating, and transportation when the displacing agency determines that it is desirable.

(4) The cost of storage of personal property for a period generally not to exceed 6 months when the displacing agency determines that storage is necessary in connection with relocation.

(5) The cost of insurance premiums covering loss and damage of personal property while in storage or transit.

(6) The cost of removal, reinstallation, and reestablishment of machinery, equipment, appliances, and other items, not acquired as real property, including reconnection of utilities, which do not constitute an improvement (except when required by law), to the replacement site, and which were not acquired by the displacing agency. Prior to payment of any expenses for removal and reinstallation of such property, the displaced person shall be required to agree in writing that the property is personal and that the Department is released from any payment for the property.

(7) The value of property lost, stolen, or damaged (not caused by the fault or negligence of the displaced person, his agent or employees) in the process of moving, where insurance to cover such loss or damage is not available.

(8) Such other reasonable expenses determined to be eligible under regulations issued by the Department.

(b) The following limitations shall apply:

(1) When the displaced person accomplishes the move himself, the amount of payment shall not exceed the estimated cost of moving commercially.

(2) When an item of personal property which is used in connection with any business or farm operation is not moved but sold and promptly replaced with a comparable item, reimbursement shall not exceed the replacement cost, minus the proceeds received from the sale, or the cost of moving, whichever is less.

(3) When personal property which is used in connection with any business or farm operation to be moved is of low value and high bulk, and the cost of moving would be disproportionate in relation to the value, in the judgment of the Secretary (and any other agency involved), the allowable reimbursement for the expense of moving the personal property shall not exceed the difference between the amount which would have been received for such item on liquidation and the cost of replacing the same with a comparable item available on the market. This provision will be applicable in the case of moving of junkyards, stockpiled sand, gravel, minerals, metals, and similar type items of personal property.

§ 12.21 Actual direct losses by business or farm operation.

(a) When the displaced person does not move personal property, he shall be required to make a bona fide effort to sell it.

(b) When personal property is sold and the business or farm operation reestablished, the displaced person is entitled to payment provided in § 12.20(b)(2).

(c) When the business or farm operation is discontinued, the displaced person is entitled to the differences between the in-place value of the personal property and the sale proceeds, or the cost of moving, whichever is less.

(d) When the personal property is abandoned, the displaced person is entitled to payment for the difference between the in-place value and the amount which would have been received from the sale of the item, or the cost of moving, whichever is less.

§ 12.22 Exclusions on moving expenses and losses.

There shall be excluded from payment:

(a) Additional expenses incurred because of living in a new location.

(b) Cost of moving structures, improvements, or other real property in which the displaced person reserved ownership.

(c) Improvements to the replacement site, except when required by law.

(d) Interest on loans to cover moving expenses.

(e) Loss of good will.

(f) Loss of profits.

(g) Loss of trained employees.

(h) Personal injury.

(i) Cost of preparing the application for moving and related expenses.

(j) Modification of personal property to adapt it to replacement site, except when required by law.

(k) Such other items as the Secretary determines should be excluded.

§ 12.23 Expenses in searching for replacement business or farm.

(a) The following items shall be allowed:

(1) Travel costs.

(2) Extra costs for meals and lodging.

(3) Time spent in searching at the rate of the displaced person's salary or earnings, but not to exceed $10 per hour.

(4) Broker or realtor fees to locate a replacement business or farm operation under circumstances prescribed in this part, excluding however realtor and brokerage fees which should normally be paid by the seller if it were not for this subparagraph. The total amount which a displaced person may be paid for searching expenses shall not exceed $500, unless the Secretary determines that a greater amount is

justified based on the circumstances involved.

Subpart D—Payments in Lieu of Moving and Related Expenses

§ 12.30 Dwellings—schedules.

Section 202(b) of the Act provides that agencies may pay a moving expense allowance based on established schedules. These schedules shall be based on moving allowance schedules maintained by the respective State highway department, shall be current and shall provide for adequacy of reimbursement in every locality.

§ 12.31 Businesses.

(a) Eligibility: In order to be eligible for this payment, the business must contribute materially to the income of the displaced owner. This standard eliminates those part-time family occupations which do not contribute materially to a displaced person's income.

(b) Loss of existing patronage: Section 202(c) of the Act provides that an agency may make a fixed payment to a business if it determines that: (1) The business is not part of a commercial enterprise having another establishment not being acquired, engaged in a similar business, and (2) The business cannot be relocated without a substantial loss of existing patronage.

(c) The determination of loss of existing patronage shall be made by the Secretary only after consideration of all pertinent circumstances, including the following factors:

(1) The type of business conducted by the displaced concern.

(2) The nature of the clientele of the displaced concern.

(3) The relative importance of the present and proposed location to the displaced business.

§ 12.32 Farms—partial taking.

In the case where an entire farm operation is not acquired, the payment provided by section 202(c) of the Act shall be made only if the Secretary determines that the farm met the definition of a farm operation (section 101(8)) prior to the acquisition and that the property remaining after the acquisition is no longer an economic unit.

Subpart E—Replacement Housing Payments for Homeowners

§ 12.40 Eligibility.

In the implementation of section 203(a) of the Act the following provisions shall serve as guides:

(a) A displaced owner-occupant is eligible for a replacement housing payment if he meets both of the following requirements:

(1) If he actually owned and occupied the acquired dwelling for not less than 180 days prior to the initiation of negotiations for the property. The term "initiation of negotiations" for a property means the date the acquiring agency makes the first personal contact with the owner or his representative where price of the real property to be acquired is discussed.

(2) If other eligibility requirements of section 203 of the Act are met.

(b) A displaced owner-occupant of a dwelling who is determined to be ineligible under this paragraph may be eligible for a replacement housing payment under Subpart F of this part.

§ 12.41 Comparable replacement dwelling.

A comparable replacement dwelling is one which is:

(a) Decent, safe and sanitary.

(b) Functionally equivalent and substantially the same as the acquired dwelling with respect to:

(1) Number of rooms.

(2) Area of living space.

(3) Age.

(4) State of repair.

(c) Open to all persons regardless of race, color, religion, sex or national origin and consistent with the requirements of Title VIII of the Civil Rights Act of 1968.

(d) In areas not generally less desirable than the dwelling to be acquired in regard to:

(1) Public utilities.

(2) Public and commercial facilities.

(3) Reasonably accessible to the relocatee's place of employment.

(f) Available on the market to the displaced person.

(g) Within the financial means of the displaced family or individual.

§ 12.42 Computation of replacement housing payment.

(a) *Differential payment for replacement housing.* The Secretary may determine the amount necessary to purchase a comparable replacement dwelling by either establishing a schedule or by using a comparative method.

(1) *Schedule method.* The Secretary may establish a schedule of reasonable acquisition costs for comparable replacement dwellings in the various types of dwellings to be acquired and available on the private market. The schedule should be based on a current analysis of the market to determine an amount for each type of dwelling to be acquired. When more than one Federal agency is causing the displacement in a community or an area, the Secretary shall cooperate with the other agency or agencies on the method for computing the replacement housing payment. The uniform schedule of sale housing in the community or areas shall be used in that cooperative effort.

(2) *Comparative method.* The Secretary may determine the price of a comparable replacement dwelling by selecting a dwelling or dwellings most representative of the dwelling unit acquired, available to the displaced person and which is a comparable replacement dwelling. Asking prices are to be adjusted to reflect the market sale experience. A single dwelling shall only be used when additional comparable dwellings are not available.

(3) *Alternate to paragraphs (a) (1) and (2) of this section.* When neither method is feasible, the Secretary shall develop criteria for computing the payment.

(4) *Limitations.* The amount established as the differential payment for the replacement housing sets the upper limit of this payment. To qualify for the full amount the displaced person must purchase and occupy a decent, safe, and sanitary dwelling equal to or higher in price than the acquisition price of the acquired dwelling.

(i) If the displaced person on his own voluntarily purchases and occupies a decent, safe, and sanitary dwelling at a price less than the above the comparable replacement housing payment will be reduced to that amount required to pay the difference between the acquisition price of the acquired dwelling and the actual purchase price of the replacement dwelling.

(ii) If the displaced person on his own voluntarily purchases and occupies a decent, safe, and sanitary dwelling at a price less than the acquisition price of the acquired dwelling, no differential payment shall be made.

(b) *Interest payment.* The interest payment shall be based on the present value of the reasonable cost of the interest differential including points paid by the purchaser on the amount refinanced not to exceed the amount of the unpaid debt for its remaining term at the time of acquisition of the real property.

(c) *Incidental expenses.* (1) The incidental expense payment is the amount necessary to reimburse the homeowner for actual costs incurred by him incident to the purchase of the replacement dwelling such as:

(i) Legal, closing, and related costs including title search, preparing conveyance contracts, notary fees, surveys, preparing drawings of plats, and charges incident to recordation.

(ii) Lenders', FHA or VA, appraisal fees.

(iii) FHA application fee.

(iv) Certification of structural soundness when required by lender, FHA or VA.

(v) Credit report.

(vi) Title policies or abstracts of title.

(vii) Escrow agent's fee.

(viii) State revenue stamps or sale or transfer taxes.

(2) No fee, cost, charge, or expense is reimbursable which is determined to be a part of the finance charge under the Truth in Lending Act, title I, Public Law 90-321, and Regulation "Z" issued pursuant thereto by the Board of Governors of the Federal Reserve System.

Subpart F—Replacement Housing for Tenants and Certain Others

§ 12.50 Eligibility.

In the implementation of section 204 of the Act, the Secretary shall be guided by the following provisions:

(a) A displaced tenant or owner-occupant of less than 180 days is eligible for a replacement housing payment if he meets both of the following requirements:

(1) Actually occupied the dwelling for not less than 90 days prior to the initiation of negotiations for acquisition of the property. The term "initiation of negotiations" for a property means the date the Department or other acquiring agency makes the first personal contact with the owner or his representative where price of the real property to be acquired is discussed. The Secretary shall advise tenants and other persons occupying the property when negotiations for the property are initiated with the owner thereof, and

(2) The other eligibility requirements of section 204 of the Act.

(b) An owner-occupant otherwise eligible for a payment under Subpart E of this part who rents instead of purchasing a replacement dwelling is eligible for replacement housing as a tenant.

§ 12.51 Computation of replacement housing payment for displaced tenants.

(a) A displaced tenant is eligible for a rental replacement housing payment and if he purchases replacement housing, he is eligible for a downpayment, including closing costs.

(b) Rental replacement housing payment: The Secretary may determine the amount necessary to rent a comparable replacement dwelling by either establishing a schedule or by using a comparative method.

(1) *Schedule method.* There may be established a rental schedule for renting comparable replacement dwellings as described in § 12.41, in the various types of dwellings to be acquired and available on the private market. The payment shall be computed by determining the amount necessary to rent a comparable replacement dwelling for 4 years (the average monthly cost from the schedule) and subtracting from such amount 48 times the average month's rent paid by the displaced tenant in the last 3 months prior to initiation of negotiation if such rent was reasonable. For purposes of this part economic rent is defined as the amount of rent the displaced tenant would have had to pay for a similar dwelling unit in areas not generally less desirable than the dwelling unit to be acquired. The schedule shall be based on current analysis of the market to determine an amount for each type of dwelling required. When more than one Federal agency including the Department is causing the displacement in a community or an area, the Secretary shall cooperate with the other agencies on the method for computing the replacement housing payment and shall use uniform schedules of average rental housing in the community or area; the Department's official affected will be immediately notified.

(2) *Comparative method.* The average month's rent may be determined by selecting one or more dwellings most representative of the dwelling unit acquired, which is available to the displaced person and meets the definition of a comparable replacement dwelling as described in § 12.41. The payment should be computed by determining the amount necessary to rent a comparable replacement dwelling for 4 years and subtracting from such amount 48 times the average month's rent paid by the displaced tenant in the last 3 months prior to initiation of negotiations, if such rent was reasonable. The use of economic rather than actual rent paid by the displaced tenant will be discretionary with the Secretary.

(3) *Exceptions.* The average month's rent may be established by using more than 3 months, if deemed advisable. If rent is being paid to the Department and/or another displacing agency, economic rent shall be used in determining the amount of the payment to which the displaced tenant is entitled.

(4) *Alternate to paragraphs (b) (1) and (2) of this section.* When neither method is feasible, other criteria for

computing the payment shall be developed.

(5) *Disbursement of rental replacement housing payment.* All rental replacement housing payments in excess of $500 will be made in four equal annual installments. Before making each installment payment, the Secretary must verify that the tenant is in decent, safe, and sanitary housing.

(c) Purchases—replacement housing payment: If the tenant elects to purchase instead of renting, the payment shall be determined by combining the amount necessary to enable him to make a downpayment and the amount necessary to cover incidental expenses on the purchase of replacement housing.

(1) The downpayment shall be the amount necessary to make a downpayment on a comparable replacement dwelling. Determination of the amount necessary for such downpayment shall be based on the amount of downpayments that would be required for a conventional loan.

(2) Incidental expenses of closing the transaction are those as described in § 12.42(c).

(3) The full amount of the downpayment must be applied to the purchase price and such downpayment and incidental costs shown on the closing statement.

(d) If the displaced person cannot be paid or payment computed under paragraph (c) of this section, payment should be computed as provided under § 12.52.

§ 12.52 Computation of replacement housing payment for certain others.

(a) A displaced owner-occupant not eligible under Subpart E because he elects not to purchase a replacement dwelling, but wishes to rent may receive a rental replacement housing payment not to exceed $4,000. The payment shall be computed in the same manner as shown in § 12.51(b) with the following additional criteria:

(1) The present rental rate for the acquired dwelling shall be economic rent as determined by market data, and

(2) The payment may not exceed the amount which he would have received had he elected to receive a replacement housing payment under Subpart E of this part.

(b) A displaced owner-occupant who does not qualify for a replacement housing payment under Subpart E because of the 180 day occupancy requirement and elects to rent is eligible for a rental replacement housing payment not to exceed $4,000. The payment will be computed in the same manner as shown in § 12.51, except that the present rental rate for the acquired dwelling shall be economic rent as determined by market data.

(c) A displaced owner-occupant who does not qualify for a replacement housing payment under Subpart E because of the 180 day occupancy requirement and elects to purchase a replacement dwelling is eligible for a replacement housing downpayment and closing costs not to exceed $4,000. The payment will be computed in the same manner as shown in § 12.51(c).

Subpart G—Relocation Assistance Advisory Services

§ 12.60 Coordination of Relocation Assistance Advisory Services.

Section 205 of the Act requires the head of a Federal agency to provide a relocation assistance advisory program for persons displaced as a result of Federal programs or projects. When more than one Federal agency is causing displacement in a community or an area, the Secretary shall taken positive action to assure the maximum coordination of relocation activities with the other agency or agencies. To assure simplification and coordination in administering relocation activities, the Department should contract with a single agency if feasible to assume full responsibility for providing relocation services and assistance in a given community or area. Officials responsible for programs that displace persons, businesses and farms shall contact State and local government agencies in the community to determine the availability of housing resources and to assure coordination of all relocation activities in the community.

Subpart H—Federally Assisted Programs

§ 12.70 Assurances.

(a) *Information.* The assurances required by sections 210 and 305 of the Act should include a statement that the affected persons will be adequately informed of the benefits, policies and procedures described in the assurances.

(b) *Inability to provide assurances.* A State agency's assurances shall be accompanied by a statement in which it specifies any provision of the assurances required by sections 210 and 305 of the Act, which it is unable to provide in whole or in part, under its laws. In the event a State agency maintains that it is legally unable to provide all or any part of the required assurances, its statement shall be supported by an opinion of the chief legal official of the State agency. The opinion shall contain a full discussion of the issues involved, and shall cite legal authority in support of the conclusion of legal inability to provide any part of the required assurances.

(c) *Compliance with sections 301 and 302 of the Act.* A State agency shall provide a statement indicating the extent to which it can comply with the provisions of sections 301 and 302 of the Act. If the State agency indicates that it is unable to comply fully with any of such policies, its statement shall be supported by an opinion of the chief legal officer of the State agency. The opinion shall contain a full discussion of the issues involved, and shall cite legal authority in support of the conclusion of legal inability to comply with any of the provisions set forth in sections 301 and 302 of the Act.

(d) *Monitoring assurances.* The Secretary shall take continuing action to insure that State agencies are acting in accordance with the assurances they have provided.

§ 12.71 Administration—relocation assistance programs.

(a) *Approval.* If a State agency elects to contract for services pursuant to section 212 of the Act, it shall enter into a written contract which shall be consistent with regulations of the Department of Labor while it is administering the project or program causing the displacement. The Secretary shall take necessary action to assure that the contract will assist in providing a uniform and effective relocation program consistent with this part.

(b) *Contents.* Any such contract shall include, but is not limited to the following provisions:

(1) That payments or services shall be provided in accordance with Departmental regulations.

(2) That records required by Department of Labor regulations will be retained for a period of at least 3 years and shall be available for inspection by representatives of the Department.

(3) Clauses required by Departmental regulations implementing Title VI of the Civil Rights Act of 1964 (Public Law 88-352).

Subpart I—Annual Report

§ 12.80 Frequency.

The report required by section 214 of the Act, shall be submitted to the Office of Management and Budget on a fiscal year basis, with the first report covering the period January 2, 1971, through June 30, 1971.

§ 12.81 Preparation.

The annual report will be prepared in accordance with standards to be issued by the Office of Management and Budget which will include:

(a) Format for reporting statistics on relocation.

(b) Narrative requirements for comments, and recommendations under section 214 of the Act.

(c) Summary statements on the waiver of assurances under section 205 of the Act; and

(d) A statement of the administrative costs incident to the disbursement of rental payments under Subpart F of this part.

Subpart J—Uniform Real Property Acquisition Policy

§ 12.90 Acquisition practice.

Section 301 of the Act requires that before initiation of negotiations for acquisition of real property, the agency concerned shall establish an amount believed to be just compensation therefor. When negotiations are initiated, the owner of such real property shall be provided with a written statement of, and summary of the basis for the amount estimated as the just compensation. The summary statement of the basis for the Department's determination of just compensation will include, as a minimum, the following:

(a) Identification of the real property and the estate or interest therein to be acquired including the buildings, structures, and other improvements on the land as well as the fixtures considered to be part of the real property.

(b) The amount of the estimated just compensation as determined by the Department or other acquiring agency, and a statement of the basis therefor.

(c) If only a portion of the property is to be acquired, a separate statement of the estimated just compensation for the real property interest to be acquired and, where appropriate, damages and benefits to the remaining real property.

PART 14—SECURITY REGULATIONS

Subpart A—Introduction to Security Regulations

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14.21 Release of classified information to foreign governments.
14.22 Availability of classified information to persons not employed by the Department of Labor.

AUTHORITY: Executive Order No. 12065, June 28, 1978, 43 FR 28949.

SOURCE: 44 FR 57398, Oct. 5, 1979, unless otherwise noted.

Subpart A—Introduction to Security Regulations

§ 14.1 Purpose.

These regulations implement Executive Order 12065, entitled National Security Information, dated June 28, 1978, and directives issued pursuant to that Order through the National Security Council and the Atomic Energy Act of 1954, as amended.

§ 14.2 Policy.

The interests of the United States and its citizens are best served when information regarding the affairs of Government is readily available to the public. Provisions for such an informed citizenry are reflected in the Freedom of Information Act (5 U.S.C. 552) and in the current public information policies of the executive branch.

(a) *Safeguarding national security information.* Some official information within the Federal Government is directly concerned with matters of national defense and the conduct of foreign relations. This information must, therefore, be subject to security constraints, and limited in terms of its distribution.

(b) *Exemption from public disclosure.* Official information of a sensitive nature, hereinafter referred to as national security information, is expressly exempted from compulsory public disclosure by Section 552(b)(1) of Title 5 U.S.C. Persons wrongfully disclosing such information are subject to prosecution under the Federal Criminal Code.

(c) *Scope.* To ensure that National Security information is protected, but only to the extent and for such a period as is necessary, these regulations:

(1) Identify information to be protected.

(2) Prescribe procedures on classification, declassification, downgrading, and safeguarding of information.

(3) Establish a monitoring system to ensure the effectiveness of the Department of Labor (DOL) Security program and regulations.

(d) *Limitation.* The need to safeguard National Security information in no way implies an indiscriminate license to withhold information from the public. It is important that the citizens of the United States have access, consistent with national security, to information concerning the policies and programs of their Government.

§ 14.3 DOL Classification Review Committee.

A DOL Classification Review Committee is hereby established.

(a) *Composition of committee.* The members of this Committee are:

Chairperson—Director, Administrative Programs and Services, OASAM.
Member—Director, Office of Management, Administration and Planning, Bureau of International Affairs.
Member—Security Officer, Bureau of Labor Statistics.
Member—Security Officer, Occupational Safety and Health Administration.
Member—Administrative Officer, Office of the Solicitor.
Member—Assistant Inspector General, Office of Inspector General.

(b) *Responsibilities.* The Committee is responsible for:

(1) Acting on all suggestions and complaints arising with respect to the DOL's information security program.

(2) Reviewing all appeals of requests for records under the Freedom of Information Act, 5 U.S.C. 552, when the proposed denial is based on continued classification under Executive Order 12065.

(3) Recommending to the Secretary of Labor appropriate administrative action to correct abuses or violations of any provision of Executive Order 12065 or directives thereunder. Recommended administrative actions may include notification by warning letter, formal reprimand, and, to the extent permitted by law, suspension without pay and removal. Upon receipt of any such recommendation, the Secretary shall immediately advise the Committee of the action taken.

§ 14.4 Definitions.

The following definitions apply under these regulations:

(a) *Primary organizational unit*—refers to the Office of the Secretary, Office of the Solicitor, Labor-Management Services Administration, Employment and Training Administration, Occupational Safety and Health Administration, Mine Safety and Health Administration, Employment Standards Administration, and the Bureau of International Affairs, and any other agency of the Department of Labor whose documents have been classified in the interest of National Defense.

(b) *Classify*—to assign information to one of the classification categories after determining that the information requires protection in the interests of national security.

(c) *Courier*—an individual designated by appropriate authority to protect classified and administratively controlled information in transit.

(d) *Custodian*—the person who has custody or is responsible for the custody of classified information.

(e) *Declassify*—the authorized removal of an assigned classification.

(f) *Document*—any recorded information regardless of its physical form or characteristics, including (but not limited to):

(1) Written material—(whether handwritten, printed or typed).

(2) Painted, drawn, or engraved material.

(3) Sound or voice recordings.

(4) Printed photographs and exposed or printed films (either still or motion picture).

(5) Reproductions of the foregoing, by whatever process.

(g) *Downgrade*—to assign lower classification than that previously assigned.

(h) *Derivative classification*—a determination that information is in substance the same as information that is currently classified. It is to incorporate, paraphrase, restate or generate in new form information that is already classified (usually by another Federal agency).

(i) *Information Security Oversight Office*—an office located in the GSA that monitors the implementation of E.O. 12065.

(j) *Interagency Information Security Committee*—pursuant to E.O. 12065, an Interagency Information Security Committee (IISC) has been established. It is chaired by the Director of the Information Security Oversight Office and is comprised of representatives of the Secretaries of State, Defense, Treasury, and Energy, the Attorney General, the Director of Central Intelligence, the National Security Council, the Domestic Policy Staff, and the Archivist of the United States. Representatives of other agencies may be invited to meet with the Committee on matters of particular interest to those agencies. The Committee shall meet at the call of the Chairperson or at the request of a member agency and shall advise the Chairperson on implementation of E.O. 12065.

(k) *Marking*—the physical act of indicating the assigned security classification on national security information.

(l) *Material*—any document, product, or substance on or in which information is recorded or embodied.

(m) *Nonrecord material*—extra copies and duplicates, the use of which is temporary, including shorthand notes, used carbon paper, preliminary drafts, and other material of similar nature.

(n) *Paraphrasing*—a restatement of the text without alteration of its meaning.

(o) *Product and substance*—any item of material (other than a document) in all stages of development, processing, or construction and including elements, ingredients, components, accessories, fixtures, dies, models, and mockups associated with such items.

(p) *Record material*—all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the U.S. Government in connection with the transaction of public business; this includes material preserved by an agency or its legitimate successor as evidence of its organization, functions, policies, decisions, procedures, or other activities, or because of the informational data contained therein.

(q) *True reading*—the unparaphased literal text.

(r) *Upgraded*—to assign a higher classification than that previously assigned.

Subpart B—Review of Classified Information

§ 14.10 Mandatory review for declassification.

(a) *Scope of review.* The mandatory review procedure applies to information originally classified by the DOL when it had such authority, i.e. before December 1, 1978. Requests may come from members of the public or a government employee or agency. The procedures do not apply to information originated by other agencies and merely held in possession of the DOL. Requests for disclosure submitted under provisions of the Freedom of Information Act are to be processed in accordance with provisions of that Act.

(b) *Where requests should be directed.* Requests for mandatory review for declassification should be directed to the Department of Labor, Office of the Assistant Secretary for Administration and Management, (OASAM), Wash., D.C. 20210. Requests should be in writing and should reasonably describe the classified information to allow identification. Whenever a request does not reasonably describe the information sought, the requestor will be notified that unless additional information is provided or the scope of the request is narrowed, no further action will be undertaken.

(c) *Processing.* The OASAM will assign the request to the appropriate DOL office for declassification consideration. A decision will be made within 60 days as to whether the requested information may be declassified and, if so, made available to the requestor. If the information may not be released in whole or in part, the requestor will be given a brief statement as to the reasons for denial, and a notice of the right to appeal the determination to the DOL Classification Review Committee, Office of the Assistant Secretary for Administration and Management, Washington, D.C. 20210. The requestor is to be told that such an appeal must be filed with the DOL within 60 days.

(d) *Appeals procedure.* The DOL Classification Review Committee will review and act within 30 days upon all applications and appeals for the declassification of information. The Committee is authorized to overrule, in behalf of the Secretary, Agency determinations in whole or in part, when it decides that continued protection is not required. It will notify the requestor of the declassification and provide the information. If the Committee determines that continued classification is required, it will promptly notify the requestor and provide the reasons for the determination.

(e) *Burden of proof.* In evaluating requests for declassification the DOL Classification Review committee will require the DOL office having jurisdiction over the document to prove that continued classification is warranted.

(f) *Fees.* If the request requires a service for which fair and equitable fees may be charged pursuant to Title 5 of the Independent Offices Appropriation Act, 31 U.S.C. 483a (1976), the requestor will be notified and charged.

Subpart C—Transmission of Classified Information

§ 14.20 Dissemination to individuals and firms outside the executive branch.

Requests for classified information received from sources outside the executive branch of the Federal Government, provided the information has been originated by the DOL, will be honored in accordance with the following guidelines:

(a) *Top Secret Information.* All requests for Top Secret Information by an individual or firm outside the executive branch must be referred promptly to the OASAM for consideration on an individual basis.

(b) *Secret and Confidential Information.* Subject to the restrictions below, Secret or Confidential information may be furnished to an individual or firm outside the executive branch if the action furthers the official program of the organizational unit in which the information originated. The official furnishing such information must ensure that the individuals to whom the information is to be furnished have the appropriate DOL clearance, or at least clearance for the same or higher classification from another Federal department, or outside agency whose security clearances are acceptable to the DOL. The official must also ensure that the person to whom the classified information is being furnished possesses the proper facilities for safeguarding such information. *No Secret or Confidential information may be furnished to an individual or firm outside the executive branch without written concurrence from the primary organizational unit head or the Security Officer of that unit.*

(c) *Unauthorized knowledge of classified information.* Upon receipt of a request for classified information which raised a suspicion that an individual or organization outside the executive branch has unauthorized knowledge of the existence of Confidential, Secret, or Top Secret information, a report providing all available details must be immediately submitted to the DOL Document Security Officer for appropriate action and disposition.

(d) *Requests from outside the United States.* All requests from outside the United States for Top Secret, Secret or Confidential information, except those received from foreign offices of the primary organizational unit or from U.S. embassies or similar missions, will be referred to the Deputy Under Secretary for International Affairs.

(e) *Access by historical researchers.* Individuals outside the executive branch engaged in historical research may be authorized access to classified information over which the DOL has jurisdiction provided:

(1) The research and need for access conform to the requirements of Section 4-302 of Executive Order 12065.

(2) The information requested is reasonably accessible and can be located

and compiled with a reasonable amount of effort.

(3) The researcher agrees to safeguard the information in a manner consistent with E.O. 12065 and directives thereunder.

(4) The researcher agrees to a review of the notes and manuscript to determine that no classified information is contained therein.

Authorization for access is valid for the period required but no longer than 2 years from the date of issuance unless it is renewed under the conditions and regulations governing its original authorization.

(f) *Access by former presidential appointees.* Individuals who have previously occupied policymaking positions to which they were appointed by the President may be authorized access to classified information which they originated, reviewed, signed, or received while in public office. Upon request, information identified by such individuals will be reviewed for declassification in accordance with the provisions of these regulations.

§ 14.21 Release of classified information to foreign governments.

National security information will be released to foreign governments in accordance with the criteria and procedures stated in the President's Directive entitled "Basic Policy Governing the Release of Classified Defense Information to Foreign Governments" dated September 23, 1958. All requests from Foreign Governments for the release of such information will be referred to the Deputy Under Secretary for International Affairs.

§ 14.22 Availability of classified information to persons not employed by the Department of Labor.

(a) *Approval for access.* Access to classified information in the possession or custody of the primary organizational units of the Department by individuals who are not employees of the executive branch shall be approved in advance by the DOL Document Security Officer.

(b) *Access to Top Secret Material.* Access to Top Secret Information within the primary organizational units of the DOL by employees of other Federal agencies must be approved in advance by the Top Secret Control Officer of the primary organizational unit.

(c) *Access to Secret and Confidential Information.* Secret and Confidential information may be made available to properly cleared employees of other Federal departments or outside agencies if authorized by the primary organizational unit having custody of the information.

PART 15—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT AND RELATED STATUTES

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AUTHORITY: 28 U.S.C. 2672; 28 CFR 14.11; 31 U.S.C. 241; 29 U.S.C. 926(b), and Secretary's Order 24-76.

SOURCE: 42 FR 769, Jan. 7, 1977, unless otherwise noted.

Subpart A—Claims Against Government Under Federal Tort Claims Act

§ 15.1 Scope and purpose.

(a) The purpose of this subpart is to set forth regulations relating to claims asserted under the Federal Tort Claims Act, as amended, accruing on or after January 18, 1967, and filed after the effective date of these regulations, for money damages against the United States for injury to or loss of property or personal injury or death casued by the negligent or wrongful act or omission of an officer or employee of the Department of Labor while acting within the scope of his office or employment. It reflects delegations of authority which have been published in the FEDERAL REGISTER and replaces § 2.5 of this title, "General Regulations," relating to "Claims under the Federal Tort Claims Act for loss or damage to property or for personal injury or death," which is hereby revoked.

(b) This subpart is issued subject to and consistent with applicable regulations on administrative claims under the Federal Tort Claims Act issued by the Attorney General (31 FR 16616; 28 CFR Part 14).

§ 15.2 Definitions.

(a) "Department" means the Department of Labor, which consists of the Office of the Secretary and the several organizational units.

(b) "Organizational unit" means the jurisdictional area of each Assistant Secretary, each office head reporting directly to the Secretary, and each Regional Administrator.

(c) "Act" means the Federal Tort Claims Act, as amended (28 U.S.C. 1346(b), 28 U.S.C. 2671 et seq.).

§ 15.3 Filing of claims.

(a) A claim for injury to or loss of property may be presented by the owner of the property, his duly authorized agent, or his legal representative.

(b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or his legal representative.

(c) A claim for death may be presented by the executor or administrator of the decedent's estate, or by any other person legally entitled to assert such a claim in accordance with applicable State law.

(d) A claim for loss wholly compensated by an insurer and the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. Whenever an insurer presents a claim asserting the rights of a subrogee, he shall present with his claim appropriate evidence that he has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or representative, show the title or legal capacity of the person signing and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or legal representative.

§ 15.4 Where to file.

(a) For the purposes of this subpart, a claim shall be deemed to have been presented when the Department receives, at a place designated in paragraph (b) of this section, a properly executed "Claim for Damages or Inquiry", on Standard Form 95, or other written notification of an incident accompanied by a claim for money damages in a sum certain for injury to or loss of property or personal injury or death by reason of the incident.

(b)(1) A claimant shall mail or deliver his claim for money damages for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Department while acting within the scope of his office or employment hereunder to the office of employment of the departmental employee or employees whose negligent or wrongful act or omission is alleged to have caused the alleged loss or injury. Where such office of employment is the Department's national office in Washington, D.C., or is not reasonably known and not reasonably ascertainable, claimant shall file his claim with the

Office of the Solicitor of Labor, U.S. Department of Labor, 200 Constitution Avenue, N.W., Suite N2716, Washington, D.C. 20210.

(2) In all other cases, the claimant shall address his claim to the regional or branch office of the Office of the Solicitor having jurisdiction over the location of the office of employment. The addresses and areas of jurisdiction for each such regional and branch office are as follows:

Regional Solicitor, U.S. Department of Labor, John F. Kennedy Federal Building, Government Center—Room 1803, Boston, MA 02203.

(For claims arising in Maine, Massachusetts, New Hampshire, Vermont, Rhode Island, and Connecticut.)

Regional Solicitor, U.S. Department of Labor, 1515 Broadway, Room 3555, New York, NY 10036.

(For claims arising in New Jersey, and New York.)

Regional Attorney, U.S. Department of Labor, 212 U.S. Court House and Federal Office Building, Carlos Chardon Avenue, Hato Rey, Puerto Rico 00918.

(For claims arising in Puerto Rico and the Virgin Islands.)

Regional Solicitor, U.S. Department of Labor, 14480 Gateway Building, 3535 Market Street, Philadelphia, PA 19104.

(For claims arising in Delaware, Maryland, Pennsylvania, Virginia, and West Virginia.)

Regional Solicitor, U.S. Department of Labor, 1371 Peachtree Street, N.E., Room 339, Atlanta, GA 30309.

(For claims arising in Florida, Georgia, and South Carolina.)

Associate Regional Solicitor, U.S. Department of Labor, 1929 9th Avenue S., Birmingham, AL 35205.

(For claims arising in Alabama and Mississippi.)

Regional Attorney, U.S. Department of Labor, 280 U.S. Courthouse Building, 801 Broadway, Nashville, Tenn. 37203.

(For claims arising in Kentucky, North Carolina, and Tennessee.)

Regional Solicitor, U.S. Department of Labor, Federal Office Building, 230 South Dearborn Street, Eighth Floor, Chicago, IL 60604.

(For claims arising in Illinois, Indiana, Minnesota, and Wisconsin.)

Associate Regional Solicitor, U.S. Department of Labor, Federal Office Building, Cleveland, Ohio 44199.

(For claims arising in Ohio.)

Associate Regional Solicitor, U.S. Department of Labor, 234 State Street, Detroit, Mich. 48226.

(For claims arising in Michigan.)

Regional Solicitor, U.S. Department of Labor, 555 Griffin Square Building, Suite 707, Griffin & Young Streets, Dallas, TX 75202.

(For claims arising in Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.)

Regional Solicitor, U.S. Department of Labor, 2106 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106.

(For claims arising in Iowa, Kansas, Missouri, and Nebraska.)

Associate Regional Solicitor, U.S. Department of Labor, Federal Office Building, Room 16444, 1961 Stout Street, Denver, CO 80202.

(For claims arising in Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.)

Regional Solicitor, U.S. Department of Labor, P.O. Box 36017 Federal Building, 450 Golden Gate Avenue, San Francisco, CA 94102.

(For claims arising in Arizona (except Southern Arizona), California (except Southern California), Guam, Hawaii, and Nevada (except Southern Nevada).)

Associate Regional Solicitor, U.S. Department of Labor, Federal Building, Los Angeles, CA 90012.

(For claims arising in Southern Arizona, Southern California, and Southern Nevada.)

Associate Regional Solicitor, U.S. Department of Labor, 7009 Federal Office Building, 900 First Avenue, Seattle, WA 98101.

(For claims arising in Alaska, Idaho, Oregon, Washington.)

[42 FR 769, Jan. 7, 1977, as amended at 42 FR 11832, Mar. 1, 1977]

§ 15.5 Evidence or Information Required.

(a) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant is required to submit the following evidence or information:

(1) A written report by the attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent impairment, the prognosis period of hospitalization, if any, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed or designated by the Department or another federal agency. A copy of the report of the examining physician shall be made

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available to the claimant upon the claimant's written request: *Provided*, That he has, upon request, furnished the report referred to in the first sentence of this subparagraph and has made, or agrees to make available to the Department any other physician's report previously or thereafter made of the physical or mental condition which is the subject matter of the claim.

(2) Itemized bills for medical, dental and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from employment, whether he is a full or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings lost. For example, income tax returns for several years prior to the injury in question and the year in which the injury occurred may be used to indicate or measure lost income; a statement of how much it did or would cost the claimant to hire someone else to do the same work he was doing at the time of injury might also be used in measuring lost income.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(b) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at the time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full name, address, birth date, kinship and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or damages claimed.

(c) *Property damages.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, and salvage value where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

§ 15.6 Action on claims.

(a) *Claims Investigation.* When a claim has been filed with the Department, the head of the organizational unit involved, or his designee, shall designate an employee in that unit who shall act as the Claims Investigatory Officer for the claim and who shall:

(1) Investigate as completely as is practicable the nature and circumstances of the occurrence causing the loss or damage to the claimant's property.

(2) Ascertain the extent of loss or damage to the claimant's property.

(3) Assemble the necessary forms with required data contained therein.

(4) Prepare a brief statement setting forth the facts relative to the claim, a finding whether the claim satisfies the requirements of this subpart, and a recommendation as to the amount to be paid in settlement of the claim.

(5) Submit such forms, statements, and all necessary supporting papers to the head of the organizational unit having jurisdiction over the employee involved, who shall then transmit the entire file to the appropriate Office of the Solicitor of Labor, as set forth in § 15.4(b) above.

(b) *Authority to consider, ascertain, adjust, determine, compromise and settle claims.* The Deputy Solicitor shall have the power to consider, ascertain, adjust, determine, compromise and settle claims pursuant to the Federal Tort Claims Act which involve the alleged negligence, or wrongful act or omission of an employee whose office of employment is the Department's national office in Washington, D.C., or which exceed $2,500 in amount or which involve a new precedent or a new point of law, or a question of policy. Regional Solicitors, the Associate Regional Solicitors and Regional Attorneys listed in § 15.4(b) are authorized to consider, ascertain, adjust, determine, compromise and settle, claims arising in their respective jurisdictions pursuant to the Federal Tort Claims Act which do not exceed $2,500 in amount and which do not involve a new precedent or new point of law or a question of policy.

[42 FR 769, Jan. 7, 1977, as amended at 42 FR 11832, Mar. 1, 1977]

§ 15.7 Payment of awards.

Any award, compromise or settlement in the amount of $2,500 or less made pursuant to this section shall be paid by the Secretary of Labor out of appropriations available to the Department of Labor. Payment of an award, compromise or settlement in an amount in excess of $2,500 made pursuant to this section shall be made in accordance with 28 CFR 14.10.

§ 15.8 Referral to Department of Justice.

An award, compromise or settlement of a claim under § 2672, Title 28, United States Code, and this subpart, in excess of $25,000 may be effected only with the prior written approval of the Attorney General or his designee. For the purpose of this Subpart, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

§ 15.9 Final denial of claim.

Final denial of an administrative claim under this subpart shall be in writing, and notification of denial shall be sent to the claimant, his attorney or legal representative by certified or registered mail. The notification of final denial shall include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the Department's action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

§ 15.10 Action on approved claim.

(a) Payment of a claim approved under this subpart is contingent upon claimant's execution of (1) a claim for "Damage or Injury", Standard Form 95; (2) a claims settlement agreement; and (3) a "Voucher for Payment", Standard Form 1145, as appropriate. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his attorney as payees, and the check shall be delivered to the attorney whose address shall appear on the voucher.

(b) Acceptance by the claimant, his agent or legal representative of an award, compromise, or settlement made under § 2672 or 2677 of Title 28, United States Code, is final and conclusive on the claimant, his agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented and constitutes a complete release of any claim against the United States and against any officer or employee of the Government whose act or omission gave rise to the claim by reason of the same subject matter.

Subpart B—Claims Under the Military Personnel and Civilian Employees' Claims Act of 1964

§ 15.11 Scope and purpose.

(a) This subpart applies to all claims filed by or on behalf of employees of the Department of Labor (DOL) for loss of or damage to personal property after the effective date of these regulations, incident to their service with DOL under the Military Personnel and Civilian Employees' Claims Act of 1964, (hereinafter referred to as the Act.) A claim must be substantiated and the possession of the property determined to be reasonable, useful or proper. The maximum amount that can be paid for any claim under the Act is $15,000 and property may be replaced in kind at the option of the Government.

(b) DOL is not an insurer and does not underwrite all personal property losses that an employee may sustain. Employees are encouraged to carry private insurance to the maximum extent practicable to avoid large losses which may not be recoverable from DOL. The procedures set forth in this section are designed to enable the claimant to obtain the proper amount of compensation for the loss or damage. Failure of the claimant to comply with these procedures may reduce or preclude payment of the claim under this Subpart.

§ 15.12 Filing of claims.

(a) *Who may file.* (1) A claim may be made pursuant to this subpart by an employee or in the employee's name by the employee's spouse or authorized agent, or legal representative. If the employee is deceased, the claim may be filed in the following order of preference, by the employee's spouse, children, parent, brother or sister or the authorized agent or legal representative of such other person or persons.

(2) A claim may not be made hereunder by or for the benefit of a subrogee, assignee, conditional vendor or other third party.

(b) *Where to file.* A claim hereunder must be presented in writing. If the claimant's place of employment is at the National Office of an organizational unit of the Department, the claim should be filed with the Office of the Solicitor of Labor, U.S. Department of Labor, Suite N2716, 200 Constitution Avenue, N.W., Washington, D.C. 20210. In all other cases the claimant shall address the claim to the regional or branch office of the Solicitor of Labor servicing the organizational unit. The address of such offices are set forth in § 15.4(b) above.

(c) *Evidence required.* Any claim filed hereunder must be accompanied by the following: (1) A written statement, signed by the claimant or his authorized agent, setting forth the circumstances under which the damage or loss occurred. This statement shall also include:

(i) A description of the type, design, model number or other identification of the property.

(ii) The date of purchase or acquisition, from whom purchased or acquired, and the original cost of the property.

(iii) The location of the property when the loss or damage occurred.

(iv) The purpose of and authority for travel, if the loss or damage occurred incident to transportation or to the use of a motor vehicle.

(v) Any and all available information as to the party responsible for the loss or damage, if such party is someone other than the claimant and all information as to insurance contracts whether held by the claimant or by the party responsible.

(2) Copies of all available and appropriate documents such as bills of sale, estimates of repairs, travel orders and other as the need is demonstrated. In the case of an automobile, the claimant must file two estimates of repair or a certified paid bill showing the damage incurred, the cost of all parts, labor and other items necessary to the repair of the vehicle, or a statement from an authorized dealer or repair garage showing that the cost of such repairs exceeds the value of the vehicle.

(3) A copy of the power of attorney or other authorization if the claim is filed by someone other than the employee.

(d) *Time limitations.* A claim under this part may be allowed only if: (1) Except as provided in paragraph (d)(2) of this section, it is filed in writing within 2 years after accrual. For the purpose of this part, a claim accrues at the time of the accident or incident causing the loss or damage, or at such time as the loss or damage should have been discovered by the claimant by the exercise of due diligence.

(2) It cannot be filed within the time limits of paragraph (d)(1) of this section, because it accrues in time of war or in time of armed conflict in which any armed force of the United States is engaged or if such a war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, and if it is filed not later than 2 years after the cause ceases to exist, or 2 years after the war or armed conflict is terminated, whichever is earlier.

§ 15.13 Allowable claims.

(a) A claim may be allowed only if: (1) The damage or loss was not caused wholly or partly by the negligent or wrongful act of the claimant, his agent, the members of his family, or his private employee (the standard to be applied is that of reasonable care under the circumstances); and

(2) The possession of the property lost or damaged and the quantity possessed is determined to have been reasonable, useful or proper under the circumstances; and

(3) The claim is substantiated by proper and convincing evidence.

(b) Claims which are otherwise allowable under this part shall not be disallowed solely because the property was not in the possession of the claimant at the time of the damage or loss, or solely because the claimant was not the legal owner of the property for which the claim is made. For example, borrowed property may be the subject of a claim.

(c) Subject to the conditions in paragraph (a) of this section and the other provisions of this subpart, any claim for damage to, or loss of, personal property incident to service with DOL may be considered and allowed. The following are examples of the principal types of claims which may be allowed, but these examples are not exclusive and other types of claims may be allowed, unless hereinafter excluded:

(1) *Property or damage in quarters or other authorized places.* Claims may be allowable for damage to, or loss of, property arising from fire, flood, hurricane, other natural disaster, theft, or other unusual occurrence, while such property is located at:

(i) Quarters within the 50 States or the District of Columbia that were assigned to the claimant or otherwise provided in kind by the United States; or

(ii) Quarters outside the 50 States and the District of Columbia that were occupied by the claimant, whether or not they were assigned or otherwise provided in kind by the United States, except when the claimant is a civilian employee who is a local inhabitant; or

(iii) Any warehouse, office, working area or other place (except quarters) authorized or apparently authorized for the reception or storage of property.

(2) *Transportation or travel losses.* Claims may be allowed for damage to, or loss of, property incident to transportation or storage pursuant to order or in connection with travel under orders, including property in the custody of a carrier, an agent or agency of the Government, or the claimant.

(3) *Mobile homes.* Claims may be allowed for damage to, or loss of, mobile homes and their contents under the provisions of paragraph (c)(2) of this section. Claims for structural damage to mobile homes, other than that caused by collision, and damage to contents of mobile homes resulting from such structural damage, must contain conclusive evidence that the damage was not caused by structural deficiency of the mobile home and that it was not overloaded. claims for damage to, or loss of, tires mounted on mobile homes will not be allowed, except in cases of collision, theft or vandalism.

(4) *Enemy action or public service.* Claims may be allowed for damages to,

or loss of, property as a direct consequence of:

(i) Enemy action or threat thereof, or combat, guerilla, brigandage, or other belligerent activity, or unjust confiscation by a foreign power or its nationals.

(ii) Action by the claimant to quiet a civil disturbance or to alleviate a public disaster.

(iii) Efforts by the claimant to save human life or Government property.

(5) *Property used for the benefit of the Government.* Claims may be allowed for damage to, or loss of, property when used for the benefit of the Government at the request of, or with the knowledge and consent of superior authority.

(6) *Clothing and accessories.* Claims may be allowed for damage to, or loss of clothing or accessories customarily worn on the person, such as eyeglasses, hearing aids, or dentures.

§ 15.14 Restrictions on certain claims.

Claims of the type described in this section are only allowable subject to the restrictions noted:

(a) *Money or currency.* Claims may be allowed for loss of money or currency only when lost incident to fire, flood, hurricane, other natural disaster, or by theft from quarters (as limited by section 15.13(c)(1) above). In instances of theft from quarters, it must be conclusively shown that the quarters were locked at the time of the theft. Reimbursement for loss of money or currency is limited to an amount which is determined to have been reasonable for the claimant to have had in his possession at the time of the loss.

(b) *Government property.* Claims may only be allowed for property owned by the United States for which the claimant is financially responsible to any agency of the Government other than DOL.

(c) *Estimate fees.* Claims may include fees paid to obtain estimates of repairs only when it is clear that an estimate could not have been obtained without paying a fee. In that case, the fee may be allowed only in an amount determined to be reasonable in relation to the value of the property or the cost of the repairs.

(d) *Automobiles and other motor vehicles.* Claims may only be allowed for damage to, or loss of, automobiles and other motor vehicles if:

(1) Such motor vehicles were required to be used for official Government business (official Government business, as used here, does not include travel, or parking incident thereto between quarters and office, or use of vehicles for the convenience of the owner. However, it does include travel, and parking incident thereto, between quarters and assigned place of duty specifically authorized by the employee's supervisor as being more advantageous to the Government,); or

(2) Shipment of such motor vehicles was being furnished or provided by the Government, subject to the provisions of § 15.16, below.

§ 15.15 Unallowable claims.

Claims are not allowable for the following:

(a) *Unassigned quarters in United States.* Property loss or damage in quarters occupied by the claimant within the 50 States or the District of Columbia that were not assigned to him or otherwise provided in kind by the United States.

(b) *Business property.* Property used for business or profit.

(c) *Unserviceable property.* Wornout or unserviceable property.

(d) *Illegal possession.* Property acquired, possessed or transferred in violation of the law or in violation of applicable regulations or directives.

(e) *Articles of extraordinary value.* Valuable articles, such as cameras, watches, jewelry, furs or other articles of extraordinary value, when shipped with household goods or as unaccompanied baggage (shipment includes storage). This prohibition does not apply to articles in the personal custody of the claimant or articles properly checked: *Provided,* That reasonable protection or security measures have been taken by claimant.

(f) *Minimum amount.* Loss or damage amounting to less than $10.

§ 15.16 Claims involving carriers or insurers.

In the event the property which is the subject of the claim was lost or damaged while in the possession of a commercial carrier or was insured, the following procedures will apply:

(a) Whenever property is damaged lost or destroyed while being shipped pursuant to authorized travel orders, the owner must file a written claim for reimbursement with the last commercial carrier known or believed to have handled the goods, or the carrier known to be in possession of the property when the damage or loss occurred, according to the terms of its bill of lading or contract, before submitting a claim against the Government under this subpart.

(b) Whenever property is damaged, lost, or destroyed incident to the claimant's service and is insured in whole or in part, the claimant must make demand in writing against the insurer for reimbursement under the terms and conditions of the insurance coverage, prior to the filing of the claim against the Government.

(c) Failure to make a demand on a carrier or insurer or to make all reasonable efforts to protect and prosecute rights available against a carrier or insurer and to collect the amount recoverable from the carrier or insurer may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier or insurer had the claim been timely or diligently prosecuted. However, no deduction will be made where the circumstances of the claimant's service preclude reasonable filing of such a claim or diligent prosecution, or the evidence indicates a demand was impracticable or would have been unavailing.

(d) Following the submission of the claim against the carrier or insurer, the claimant may immediately submit his claim against the Government in accordance with the provisions of this Subpart, without waiting until either final approval or denial of his claim is made by the carrier or insurer.

(1) Upon submitting his claim, he will certify in his claim that he has or has not gained any recovery from a carrier or insurer, and enclose all corresponence pertinent thereto.

(2) If final action has not been taken by the carrier or insurer on his claim, he will immediately notify them to address all correspondence in regard to his claim to him in care of the appropriate Office of the Solicitor of Labor.

(3) The claimant shall advise the appropriate Office of the Solicitor of any action taken by the carrier or insurer on his claim and, upon request, shall furnish all correspondence, documents, and other evidence pertinent to the matter.

(e) The claimant shall assign to the United States, to the extent of any payment on his claim accepted by him, all his rights, title and interest in any claim he may have against any carrier, insurer, or other party arising out of the incident on which the claim against the United States is based. After payment of his claim by the United States, the claimant will, upon receipt of any payment from a carrier or insurer, pay the proceeds to the United States to the extent of the payment received by him from the United States.

(f) Where a claimant recovers for the loss from the carrier or insurer before his claim under this subpart is settled, the amount or recovery shall be applied to his claim as follows:

(1) When the amount recovered from a Carrier, insurer, or other third party is greater than or equal to the claimant's total loss as determined under this part, no compensation is allowable under this part.

(2) When the amount recovered is less than such total loss, the allowable amount is determined by deducting the recovery from the amount of such total loss.

(3) For the purposes of this paragraph (f) of this section the claimant's total loss is to be determined without regard to the $15,000 maximum set forth above. However if the resulting amount, after making this deduction exceeds $15,000, the claimant shall be allowed only $15,000.

§ 15.17 Claims procedures.

The Deputy Solicitor, the Regional Solicitors, Associate Regional Solicitors, and Regional Attorneys listed in § 15.4(b), are authorized to consider, ascertain, adjust, determine, compromise and settle claims filed under this Act in accordance with the limitations set forth in § 15.6(b). Unless otherwise provided, the general procedural rules for the processing and settling of administrative claims under the Federal Tort Claims Act, as set forth in Subpart A above, shall be followed.

[42 FR 11833, Mar. 1, 1977]

§ 15.18 Computation of award and finality of settlement.

(a) The amount allowable for damage to or loss of any item of property may not exceed the cost of the item (either the price paid in cash or property, or the value at the time of acquisition if not acquired by purchase or exchange); and there will be no allowance for replacement cost or for appreciation in the value of the property. Subject to these limitations, the amount allowable is either:

(1) The depreciated value, immediately prior to the loss or damage of property lost or damaged beyond economical repair, less any salvage value; or

(2) The reasonable cost of repairs, when property is economically repairable, provided that the cost of repairs does not exceed the amount allowable under paragraph (a)(1) of this section.

(b) Depreciation in value is determined by considering the type of article involved, its cost, its condition when damaged or lost, and the time elapsed between the date of acquisition and the date of damage or loss.

(c) Replacement of lost or damaged property may be made in kind wherever appropriate.

(d) Notwithstanding any other provisions of law, settlement of claims under the Act are final and conclusive as to personal damage claims of Government employees.

§ 15.19 Attorneys fees.

No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled under this subpart shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim.

Subpart C—Claims Arising Out of Operation of Job Corps Centers

§ 15.20 Scope and purpose.

(a) The purpose of this subpart is to set forth regulations relating to the claims for damage to persons or property arising out of the operation of Job corps Centers under the Comprehensive Employment and Training Act of 1973 (CETA) which the Secretary of Labor finds to be a proper charge against the United states but which are not cognizable under the Federal Tort Claims Act.

(b) This subpart further amplifies the regulatory provisions set forth in 29 CFR 97a.85 regarding such claims.

§ 15.21 Allowable claims.

(a) A claim for damage to persons or property arising out of the tortious act or omission of a Job Corps enrollee may be considered under § 416(b) of CETA (29 U.S.C. 926(b)) if the enrollee involved was not within the geographical limits of his hometown when the incident giving rise to the claim occurred, and such incident occurred on the center to which the enrollee involved was assigned, or within 100 miles of it, or while he was on authorized travel to or from the center.

(b) A claim for damage to person or property hereunder may not be cognizable under the Federal Tort Claims Act (28 U.S.C. 2677).

(c) A claim for damage to person or property may be adjusted and settled hereunder in an amount not exceeding $500.

§ 15.22 Claims procedures.

The Regional Solicitors, Associate Regional Solicitors, and Regional Attorneys listed in § 15.4(b) are authorized to consider, ascertain, adjust, determine, compromise and settle claims filed under this Act in accordance with the limitations set forth in § 15.6(b). Unless otherwise provided, the general procedural rules for the processing and settling of administrative claims under the Federal Tort Claims Act, as set forth in Subpart A above, shall be followed.

[42 FR 11832, Mar. 1, 1977]

PART 16—EQUAL ACCESS TO JUSTICE ACT

Subpart A—General Provisions

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AUTHORITY: Pub. L. 96-481, 94 Stat. 2327 (5 U.S.C. 504).

SOURCE: 46 FR 63021, Dec. 29, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 16.101 Purpose of these rules.

Section 203(a)(1) of the Equal Access to Justice Act amends section 504 of the Administrative Procedure Act to provide for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings before the Department of Labor. An eligible party may receive an award when it prevails over an agency, unless the agency's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards, the proceedings that are covered, how to apply for awards, and the standards under which awards will be granted.

§ 16.102 Definitions.

As used in this part:

(a) "The Act" means section 504 of Title 5, United States Code, as amended by section 203(a)(1) of the Equal Access to Justice Act, Pub. L. No. 96-481.

(b) "Adversary adjudication" means an adjudication under 5 U.S.C. 554 or other proceeding required by statute to be determined on the record after an opportunity for an agency hearing, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license.

(c) "Adjudicative officer" means the official who presides at the adversary adjudication, without regard to whether the official is designated as an administrative law judge, a hearing officer or examiner, or otherwise.

(d) "Department" refers to the cognizant departmental component which is participating in the adversary adjudication, (e.g., Occupational Safety and Health Administration, Mine Safety and Health Administration, and Employment Standards Administration).

(e) "Proceeding" means an adversary adjudication as defined in paragraph (b) of this section.

§ 16.103 When the Act applies.

The Act applies to any adversary adjudication pending before the Department at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981 if final agency action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final agency action occurs, except that it shall not apply in any case pending on October 1, 1981 in which a decision has been issued, but final agency action has not been taken by reason of an abatement.

§ 16.104 Proceedings covered.

(a) The Act applies in adversary adjudications in which the position of the Department or another agency of the United States is presented by an attorney or other representative who enters an appearance and participates in the proceeding in an adversarial capacity. Any proceeding which prescribes a lawful present or future rate or is primarily rule-making is not covered. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend or revoke licenses are covered if they are otherwise adversary adjudications. The following types of proceedings are deemed to be adversarial adjudications which will be covered by the Act, when all other conditions in the Act and in these rules are met:

(1) Hearings conducted by the Occupational Safety and Health Review Commission under the authority of 29 U.S.C. 661 of the Occupational Safety and Health Act; and hearings conducted by the Federal Mine Safety and Health Review Commission under the authority of 30 U.S.C. 823 of the Mine Safety and Health Act. In these proceedings, the rules of the respective Commissions rather than the instant rules will be applicable.

(2) Wage and Hour Division, Employment Standards Administration:

(i) Civil money penalties under the child labor provisions of the Fair Labor Standards Act at 29 U.S.C. 216(e) and 29 CFR Part 579.

(ii) Violations and debarment in federal contracts under the Walsh-Healey Act at 41 U.S.C. 39 and 41 CFR 50-203.1.

(iii) Revocation, modification and suspension of licenses under the Farm Labor Contractor Registration Act at 7 U.S.C. 2045(b) and 29 CFR 40.101.

(iv) Civil money penalties under the Farm Labor Contractor Registration Act at 7 U.S.C. 2048(b)(2) and 29 CFR 40.101.

(3) Office of Federal Contract Compliance Programs, Employment Standards Administration hearings prior to the denial, withholding, termination or suspension of a government contract or any portion of a contract under Title VII of the Civil Rights Act of 1964, as amended, at 42 U.S.C. 2000e-17 and 41 CFR Part 60-30.

(4) Office of Civil Rights:

(i) Fund termination under Title VI of the Civil Rights Act at 42 U.S.C. 2000d2 and 29 CFR Part 31.

(ii) Fund termination under the Age Discrimination in Federally Assisted Programs Act of 1975 at 42 U.S.C. 6104(a).

(iii) Fund termination or refusal to grant because of discrimination under 20 U.S.C. 1682.

(5) Employment and Training Administration:

(i) Proceedings under the Comprehensive Employment and Training Act at 29 U.S.C. 818, where the Department determines that a recipient of CETA funds is failing to comply with the requirements of the Act and the implementing regulations.

(ii) Conformity and compliance under the Federal Unemployment Tax Act at 26 U.S.C. 3303(b) and 3304(c).

(iii) Proceedings under section 303(b) of the Social Security Act of 1935, as amended, 42 U.S.C. 503(b).

(6) Mine Safety and Health Administration:

(i) Petitions for modification of a mandatory safety standard under the Mine Safety and Health Act at 30 U.S.C. 811(c) and 30 CFR 44.20.

(7) Occupational Safety and Health Administration:

(i) Exemptions, tolerances and variances under the Occupational Safety and Health Act at 29 U.S.C. 655 and 29 CFR 1905.3.

(b) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to the covered issues.

§ 16.105 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party, as that term is defined in 5 U.S.C. 551(3), to an adversary adjudication for which it seeks an award; the applicant must prevail; and must meet all the conditions of eligibility set out in this subpart and Subpart B.

(b) To be eligible for an award, the applicant must be:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business which has a net worth of not more than $5 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees;

(5) Any other partnership, corporation, association or public or private organization with a net worth of not more than $5 million and not more than 500 employees. A unit of state or local government is not a public organization within the meaning of this provision.

(c) For purposes of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares of another business, or controls, *in any manner*, the election of a majority of that business' board of directors, trustees or other persons exercising similar functions, shall be considered an affiliate for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 16.106 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Department as a party over which the applicant has prevailed was substantially justified or if special circumstances make the award sought unjust. No presumption arises that the Department's position was not substantially justified simply because the Department did not prevail.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding.

§ 16.107 Allowable fees and expenses.

(a) The following fees and other expenses are allowable under the Act:

(1) Reasonable expenses of expert witnesses;

(2) Reasonable cost of any study, analysis, engineering report, test, or project necessary for the preparation of the party's case;

(3) Reasonable attorney or agent fees;

(b) Awards will be based on the prevailing market rates for the kind and quality of services furnished not to exceed the rates set forth in paragraph (c) of this section.

(c) No award under these rules for the fee of an attorney or agent may exceed $75.00 per hour. No award to compensate an expert witness may exceed $24.09 per hour.

(d) In determining the reasonableness of the fee sought, the adjudicative officer shall consider the following:

(1) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(2) The time actually spent in the representation of the applicant;

(3) The difficulty or complexity of the issues in the proceeding;

(4) Such other factors as may bear on the value of the services performed.

§ 16.108 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Department of Labor and the other agency takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency by the adjudicative officer for the Department of Labor.

Subpart B—Information Required From Applicants

OMB Control No. 1225-0013. (47 FR 14696, Apr. 6, 1982)

§ 16.201 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of an agency or agencies in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant at the time the proceeding was instituted and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth at the time the formal proceedings were instituted did not exceed $1 million (if an individual) or $5 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) If the applicant is a partnership, corporation, association, or organization, or a sole owner of an unincorporated business, the application shall certify that it did not have more than 500 employees at the time the formal proceedings were initiated, giving the number of its employees and describing briefly the type and purpose of its organization or business.

(d) The application shall state the amount of fees and expenses for which an award is sought.

(e) The application may also include any other matters that the applicant wishes the adjudicative officer to consider in determining whether and in what amount an award should be made.

(f) The application shall be signed by the applicant with respect to the eligibility of the applicant and by the attorney of the applicant with respect to fees and expenses sought. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

§ 16.202 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 16.105(f) of this part) as of the date when the proceeding was initiated, i.e. the date the complaint was filed. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) The net worth exhibit shall be included in the public record of the proceeding in which an award is sought.

§ 16.203 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought.

(b) The document shall include an affidavit from each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided.

(1) The affidavit shall itemize in detail the services performed by the date, number of hours per date and the services performed during those hours. In order to establish the hourly rate, the affidavit shall state the hourly rate which is billed and paid by the majority of clients during the relevant time periods.

(2) If no hourly rate is paid by the majority of clients because, for instance, the attorney or agent represents most clients on a contingency basis, the attorney or agent shall provide affidavits from two attorneys or agents with similar experience, who perform similar work, stating the hourly rate which they bill and are paid by the majority of their clients during a comparable time period.

(c) The documentation shall also include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided.

(d) The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 16.204 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the agency's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, matters related to the consideration of an award of fees and expenses shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule final disposition means the later of: (1) The date on which an initial decision or other recommended disposition of the merits of the proceeding by an adjudicative officer or intermediate review board becomes administratively final; (2) issuance of an order disposing of any petitions for reconsideration of this agency's final order in the proceeding; (3) if no petition for reconsideration is filed, the last date on which such a petition could have been filed; or (4) issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject to a petition for reconsideration, or, in the case of an abatement, the end of the abatement period or the date on which an order is issued terminating the abatement period.

Subpart C—Procedures for Considering Applications

§ 16.301 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed with the adjudicative officer and served on all parties to the proceeding in the same manner as other pleadings in the proceeding.

§ 16.302 Answer to application.

(a) Within 30 days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless agency counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30 day period may be treated as a consent to the award requested.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 16.304.

§ 16.303 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with the agency's standard settlement procedure. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 16.304 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 16.305 Decision.

The adjudicative officer shall issue a recommended decision on the application which shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decisions shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 16.306 Review by the Secretary.

The Secretary, for purposes of this subsection, means the Secretary of Labor or a person, board or other organizational unit authorized to perform the review function. Either the applicant or agency counsel may seek review of the recommended decision on the fee application, or the Secretary may decide to review the decision on his or her own initiative, in accordance with the Department of Labor's regular review procedures. If neither the applicant nor agency counsel seeks review and the Secretary does not take review on his or her own initiative, the adjudicative officer's decision on the application shall become a final decision of the Department 45 days after it is issued. If review is taken, the Secretary will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

§ 16.307 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 16.308 Payment of award.

An applicant seeking payment of an award shall submit to the Comptroller for the Department of Labor a copy of the final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The request for payment shall be addressed to: Comptroller, U.S. Department of Labor, Frances S. Perkins Building, 200 Constitution Avenue, NW., Washington, D.C. 20210.

PART 24—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER FEDERAL EMPLOYEE PROTECTION STATUTES

Sec.
24.1 Purpose and scope.
24.2 Obligations and prohibited acts.
24.3 Complaint.
24.4 Investigations.
24.5 Hearings.
24.6 Decisions and orders.
24.7 Judicial review.
24.8 Enforcement proceedings.
24.9 Exception.

AUTHORITY: 42 U.S.C. 300j-9(i); 33 U.S.C. 1367; 15 U.S.C. 2622; 42 U.S.C. 6971; 42 U.S.C. 7622; 42 U.S.C. 5851.

SOURCE: 45 FR 1836, Jan. 8, 1980, unless otherwise noted.

§ 24.1 Purpose and scope.

(a) This part implements the several Federal employee protection provisions for which the Secretary of Labor has been given responsibility pursuant to the following statutes: Safe Drinking Water Act, 42 U.S.C. 300j-9(i); Water Pollution Control Act, 33 U.S.C. 1367; Toxic Substances Control Act, 15 U.S.C. 2622; Solid Waste Disposal Act, 42 U.S.C. 6971; Clean Air Act, 42 U.S.C. 7622; Energy Reorganization Act of 1974, 42 U.S.C. 5851.

(b) Procedures are established by this part pursuant to the federal statutory provisions listed above, for the expeditious handling of complaints by employees, or persons acting on their behalf, of discriminatory action by employers.

§ 24.2 Obligations and prohibited acts.

(a) The several statutory employee protection provisions listed in § 24.1, provide that no employer subject to the provisions of the Federal statute of which these protective provisions are a part may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, engaged in any of the activities specified in paragraph (b) of this section.

(b) Any person is deemed to have violated the particular federal law and these regulations if such person intimidates, threatens, restrains, coerces, blacklists, discharges, or in any other manner discriminates against any employee who has:

(1) Commenced, or caused to be commenced, or is about to commence or cause to be commenced a proceeding under one of the Federal statutes listed in § 24.1 or a proceeding for the administration or enforcement of any requirement imposed under such Federal statute;

(2) Testified or is about to testify in any such proceeding; or

(3) Assisted or participated, or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of such Federal statute.

§ 24.3 Complaint.

(a) *Who may file.* An employee who believes that he or she has been discriminated against by an employer in violation of any of the statutes listed in § 24.1(a) may file, or have another person file on his or her behalf, a complaint alleging such discrimination.

(b) *Time of filing.* Any complaint shall be filed within 30 days after the occurrence of the alleged violation. For the purpose of determining timeliness of filing, a complaint filed by mail shall be deemed filed as of the date of mailing.

(c) *Form of complaint.* No particular form of complaint is required, except that a complaint must be in writing and should include a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violation.

(d) *Place of filing.* A complaint may be filed in person or by mail with the Office of the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The address of the Administrator's office is Room S3502, 200 Constitution Avenue NW., Washington, D.C. 20210. A complaint may also be filed at any local office of the Wage and Hour Division. The address of such local offices may be found in local telephone directories.

§ 24.4 Investigations

(a) Upon receipt of a complaint under this part, the Administrator shall notify the person named in the complaint, and the appropriate office of the Federal agency charged with the administration of the affected program of its filing.

(b) The Administrator shall, on a priority basis, investigate and gather data concerning such case, and as part of the investigation may enter and inspect such places and records (and make copies thereof), may question persons being proceeded against and other employees of the charged employer, and may require the production of any documentary or other evidence deemed necessary to determine whether a violation of the law involved has been committed.

(c) Investigations under this part shall be conducted in a manner which protects the confidentiality of any person other than the complainant who provides information on a confidential basis, in accordance with Part 70 of this title.

(d)(1) Within 30 days of the receipt of a complaint, the Administrator shall complete the investigation, determine whether the alleged violation has occurred, and give notice of the determination which shall contain a statement of reasons for the findings and conclusions therein. Notice of the determination shall be given by certified mail to the complainant, the respondent, and to their representatives. At the same time the Administrator shall file with the Chief Administrative Law Judge, U.S. Department of Labor, the original complaint and a copy of the notice of determination.

(2)(i) If on the basis of the investigation the Administrator determines that the complaint is without merit, the notice of determination shall include, or be accompanied by notice to the complainant that the notice of determination shall become the final order of the Secretary denying the complaint unless within five calendar days of its receipt the complainant files with the Chief Administrative Law Judge a request by telegram for a hearing on the complaint. The notice shall give the address of the Chief Administrative Law Judge.

(ii) Copies of any request for a hearing shall be sent by the complainant to the respondent (employer) and to the Administrator.

(3)(i) If on the basis of the investigation the Administrator determines that the alleged violation has occurred, the notice of determination shall include an appropriate order to abate the violation, and notice to the respondent that the order shall become the final order of the Secretary unless within five calendar days of its receipt the respondent files with the Chief Administrative Law Judge a request by telegram for a hearing. An order issued pursuant to this subsection shall be in accordance with the relevant provisions of the statute violated. The notice shall give the address of the Chief Administrative Law Judge.

(ii) Copies of any request for a hearing shall be sent by the respondent (employer) to the complainant and to the Administrator.

§ 24.5 Hearings.

(a) *Notice of hearing.* The administrative law judge to whom the case is assigned shall within seven calendar days following receipt of the request for hearing, notify the parties by certified mail, directed to the last known address of the parties, of a day, time and place for hearing. All parties shall be given at least five days notice of such hearing. However, because of the time constraints imposed upon the Secretary by the above statutes, no requests for postponement shall be granted except for compelling reasons.

(b) *Consolidated hearings.* When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at each such hearing, the Chief Administrative Law Judge may, upon motion by any party or on his own or her own motion, order that a consolidated hearing be conducted. Where consolidated hearings are held, a single record of the proceedings shall be made and the evidence introduced in one case may be considered as introduced in the others, and a separate or joint decision shall be made, as appropriate.

(c) *Place of hearing.* The hearing shall, where possible, be held at a place within 75 miles of the complainant's residence.

(d) *Right to counsel.* In all proceedings under this part, the parties shall have the right to be represented by counsel.

(e) *Procedures, evidence and record*—(1) *Evidence.* Formal rules of evidence shall not apply, but rules or principles designed to assure production of the most probative evidence available shall be applied. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitious.

(2) *Record of hearing.* All hearings shall be open to the public and shall be mechanically or stenographically reported. All evidence upon which the administrative law judge relies for decision shall be contained in the transcript of testimony, either directly or by appropriate reference. All exhibits and other pertinent documents or records, either in whole or in material part, introduced as evidence, shall be marked for identification and incorporated into the record.

(3) *Oral argument; briefs.* Any party, upon request, may be allowed a reasonable time for presentation of oral argument and to file a prehearing brief or other written statement of fact or law. A copy of any such prehearing brief or other written statement shall be filed with the Chief Administrative Law Judge or the administrative law judge assigned to the case before or during the proceeding at which evidence is submitted to the administrative law judge and shall be served upon each other party. Posthearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge and shall be due within the time prescribed by the administrative law judge.

(4) *Dismissal for cause.* (i) The administrative law judge may, at the request of any party, or on his or her own motion, dismiss a claim

(A) Upon the failure of the complainant or his or her representative to attend a hearing without good cause;

(B) Upon the failure of the complainant to comply with a lawful order of the administrative law judge.

(ii) In any case where a dismissal of a claims, defense, or party is sought, the administrative law judge shall issue an order to show cause why the dismissal should not be granted and afford all parties a reasonable time to respond to such order. After the time for response has expired, the administrative law judge shall take such action as is appropriate to rule on the dismissal, which may include an order dismissing the claim, defense or party.

§ 24.6 Decisions and orders.

(a) *Recommended decision.* The administrative law judge shall issue a recommended decision within 20 days after the termination of the proceeding at which evidence was submitted. The recommended decision shall contain appropriate findings, conclusions and a recommended order and be forwarded, together with the record, to the Secretary of Labor for a final order. The recommended decision shall be served upon all parties to the proceeding.

(b) *Final order.* (1) Within 90 days after receipt of a complaint, the Secretary of Labor shall issue a final order, based on the record and the recommended decision of the administrative law judge, which shall be served upon all of the parties.

(2) If the Secretary concludes that the party charged has violated the

law, the final order shall order the party charged to take appropriate affirmative action to abate the violation, including reinstatement of the complainant to that person's former or substantially equivalent position, if desired, together with the compensation (including back pay), terms, conditions, and privileges of that employment. The Secretary may, where deemed appropriate, order the party charged to provide compensatory damages to the complainant.

(3) *Costs.* If such a final order is issued, the Secretary, at the request of the complainant, shall assess against the respondent a sum equal to the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred by the complainant, as determined by the Secretary, for, or in connection with, the bringing of the complaint upon which the final order was issued.

(4) *Dismissals.* If the Secretary determines that the party charged has not violated the law, an order shall be issued denying the complaint.

§ 24.7 Judicial review.

(a) Within 60 days after the issuance of a final order under § 24.6, above, any person adversely affected or aggrieved by such order may file a petition for review of the order in the United States court of appeals for the circuit in which the violation with respect to which the order was issued allegedly occurred. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(b) An order of the Secretary with respect to which review could have been obtained under paragraph (a) shall not be subject to judicial review in any criminal or other civil proceeding.

(c) *Certification of Record for Judicial Review.* The record of a case, including the record of proceedings before the administrative law judge, shall be transmitted by the Secretary to the appropriate court pursuant to the rules of such court.

§ 24.8 Enforcement proceedings.

(a) Whenever a person has failed to comply with a final order issued by the Secretary of Labor under § 24.6, above, the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this section, the district courts shall have jurisdiction to grant to all appropriate relief including, but not limited to, injunctive relief, compensatory and exemplary damages.

(b)(1) Any person on whose behalf a final order was issued by the Secretary of Labor under § 24.6, above, may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(2) The court, in issuing any final order under this section may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(c) Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of Title 28 of the United States Code.

§ 24.9 Exception.

This part shall have no application to any employee alleging activity prohibited by this part who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of a Federal statute listed in § 24.1, above.

PART 25—RULES FOR THE NOMINATION OF ARBITRATORS UNDER SECTION 11 OF EXECUTIVE ORDER 10988

Sec.
25.1 Purpose and scope.
25.2 Definitions.
25.3 Requests for nomination of arbitrators: Filing, disputes, parties, time.

Sec.
25.4 Contents of requests; service on other parties; answer; intervention.
25.5 Action to be taken by the Secretary; nomination and selection.
25.6 Time; additional time after service by mail.
25.7 Fees; cost; expenses; decisions.
25.8 Construction of rules.

AUTHORITY: Sec. 11, E.O. 10988, 3 CFR 1959-1963 Comp. p. 521.

SOURCE: 25 FR 9441, Sept. 13, 1966, unless otherwise noted.

§ 25.1 Purpose and scope.

These procedures govern the nomination of arbitrators by the Secretary to perform the advisory functions specified under section 11 of Executive Order 10988. Any arbitrators so nominated will be available for either or both of the following purposes: (a) To investigate the facts and issue an advisory decision with respect to the appropriateness of a unit of Federal employees for the purpose of exclusive recognition and as to related issues submitted for consideration; or (b) to determine and advise whether an employee organization represents a majority of employees in an appropriate unit by conducting or supervising an election (wherein a majority of those voting, provided there is a representative vote, cast their ballots for or against representation), or by other appropriate means. A request for a nomination will be considered as contemplating the performance of functions within the above categories if it specifies as a purpose obtaining an advisory decision on one or more questions involved in a unit determination or determination of majority status, such as an advisory decision on the eligibility of voters or the right to appear on the ballot, arising in connection with an election to be held, or on a question relating to matters affecting the results of an election which took place after the agreement to conduct the election had been entered into, provided such conduct materially affected the results of the election. Subject to compliance with these procedures, the Secretary will nominate an arbitrator whenever he is so requested by an agency or by an employee organization which is seeking recognition as the exclusive representative of Federal employees in a prima facie appropriate unit and which meets all the prerequisites for seeking such recognition.

§ 25.2 Definitions.

When used in these procedures:

(a) "Order" means Executive Order No. 10988;

(b) "Agency", "employee organization", and "employee" have the same meaning as in the Order;

(c) "Recognition" means recognition which is or may be accorded to an employee organization pursuant to the provisions of the Order;

(d) "Secretary" means the Secretary of Labor.

§ 25.3 Requests for nomination of arbitrators: Filing, disputes, parties, time.

(a) Requests for nominations should be filed only where there exists a dispute or problem which cannot more appropriately be resolved through regular agency procedures. Parties, therefore, are expected to eliminate from their requests matters not necessary to the resolution of such dispute or problem and to use their best efforts to secure agreement on as many issues as possible before making the request.

(b) Requests for nominations may be filed either by an agency, or by an employee organization as described in § 25.1, or jointly by an agency and one or more employee organizations. Joint requests are encouraged.

(c) Subject to the provisions of paragraph (a) of this section, the Secretary will entertain on its merits a request by an employee organization for nomination of an arbitrator on a question of unit determination which is made within 30 days after receipt of an agency's final unit determination or 75 days after an appropriate request for exclusive recognition and no final unit determination has been received from the agency, provided the organization has observed any reasonable time limits established by the agency for the processing of such requests within the agency. The Secretary will entertain on its merits a request by an employee organization for nomination of an arbitrator on a question of majority representation which is made within

15 days after an agency's decision with respect to a determination of majority representation. Any request by an employee organization for the nomination of an arbitrator will be considered untimely if:

(1) A written request for exclusive recognition was not made prior to the grant of such recognition to another organization provided such grant was preceded by posted notice to all employees in the unit and written notice to all organizations known to represent such employees that a request for exclusive recognition was under consideration.

(2) A written request for exclusive recognition was not made within 5 days after the agency posted appropriate notice of its intention to conduct an election to determine majority status, or more than 10 days before the date of the election.

(3) It was made less than 12 months after an agency's final unit determination with respect to such unit or subdivision thereof in a proceeding in which the organization sought exclusive recognition but failed to file a timely request for arbitration under these rules.

(4) It was made less than 12 months after a unit determination following a section 11 proceeding covering such unit or any subdivision thereof.

(5) The time limits set forth in this paragraph will be applied to all requests filed on or after October 15, 1963.

(d) No request contemplating an advisory determination as to whether an employee organization should become or continue to be recognized as the exclusive representative of employees in any unit will be entertained if the request is filed within 12 months after a prior determination of exclusive status has been made pursuant to the Order with respect to such unit unless the agency has withdrawn exclusive recognition from an employee organization by reason of its failure to maintain its compliance with sections 2 and 3(a) of the Order or with the Standards of Conduct for Employee Organizations and Code of Fair Labor Practices and the agency advises the Secretary that it has no objection to a new determination of exclusive representation being made within the 12-month period.

(e) No request contemplating an advisory determination as to whether an employee organization should become or continue to be recognized as the exclusive representative of employees in any unit will be entertained during the period within which a signed agreement between an agency and an employee organization is in force or awaiting approval at a higher management level, but not to exceed an agreement period of two years, unless (1) a request for redetermination is filed with the agency between the 90th and 60th day prior to the terminal date of such agreement or two years, whichever is earlier, or (2) unusual circumstances exist which will substantially affect the unit or the majority representation. When an agreement has been extended more than 60 days before its terminal date, such extension shall not serve as a basis for the denial of a request under this section submitted in accordance with the time limitations provided above.

[28 FR 9941, Sept. 13, 1963, as amended at 29 FR 11972, Aug. 21, 1964]

§ 25.4 Contents of requests; service on other parties; answer; intervention.

(a) Requests for nominations[1] shall be in triplicate and contain the following information:

(1) The name of the agency and the name and address of any office or branch of the agency below the national level that may be involved;

(2) A description of the unit appropriate for exclusive representation or claimed to be appropriate for such representation;

(3) The number of employees in the appropriate unit or any alleged appropriate unit;

(4) If the request is by an employee organization, the name, affiliation, if any, and address of the organization and the names, if known, of all other employee organizations claiming exclusive recognition, or having requested or attained formal or informal rec-

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[1] Requests should be on forms which will be supplied by the Secretary upon request.

ognition with respect to any of the employees in the unit involved;

(5) If the request is by an agency, the names, affiliation, if any, and addresses of the employee organization or organizations claiming exclusive recognition and of any employee organization which has requested or attained formal or informal recognition with respect to any of the employees in the unit involved;

(6) A brief statement indicating specifically the matter or matters with respect to which an advisory decision or determination is sought;

(7) A brief statement of procedures followed by and before the agency prior to the request, two copies of any appropriate agency determination and two copies of all correspondence relating to the dispute or problem;

(8) If the request is made by an employee organization, an indication of the interest of such organization, including information or data such as membership lists, employee petitions or dues records showing prima facie that the organization has sufficient membership to qualify for formal recognition, and that it represents no less than 30 percent of the employees, in the appropriate unit or alleged appropriate unit; and

(9) Any other relevant facts.

(b) A party making a request shall furnish copies to all other parties or organizations listed in the request in compliance with paragraph (a) of this section; except that membership lists, employee petitions or dues records need not be furnished by the requesting employee organization to the other parties or organizations.

(c) Any employee organization claiming to have an interest in the matter or matters to be considered by an arbitrator as to the appropriateness of a unit or majority representation must have advised the agency of its position, in the manner prescribed by the agency's rules, and must have satisfied all of the requirements of section 5 of the Order and paragraph (a)(8) of this section; except that, in any employee organization which has satisfied all of the requirements of section 5 of the Order except for the 10 percent membership requirement shall be entitled to receive notice of the proceeding and to participate therein if it represents at least two members and/or is designated by at least two employees as their representative in the unit alleged to be appropriate by the employee organization seeking exclusive recognition or the unit alleged to be appropriate by the agency, provided, however, that such intervening employee organization may not request a unit different than that sought by the employee organization seeking exclusive recognition or the unit claimed to be appropriate by the agency.

(d) Within fifteen (15) days following the receipt of a copy of any request for a nomination filed with the Secretary, the agency or any employee organization may file a response thereto with the Secretary, raising any matter which is relevant to the request including the adequacy of the showing of interest and the appropriateness of the unit under terms of the Order or these procedures. A copy of any response shall be furnished to other parties and organizations listed in the request, in the manner provided in paragraph (b) of this section.

§ 25.5 Action to be taken by the Secretary; nomination and selection.

(a) Upon receipt of a request and the responses, if any, the Secretary shall make such further inquiries as may be necessary to determine his authority under the Order and these procedures; whether a timely request for nomination has been made; whether a valid question concerning representation exists in a prima facie appropriate unit; or for the purpose of obtaining a further specification of the issues or matters to be submitted for an advisory decision or determination, or assisting or advising the persons nominated or considered for nomination or otherwise facilitating submission of the matter to such person or persons in a manner that will permit an expeditious decision or determination.

(b) The Secretary will determine the adequacy of the showing of interest administratively, and such determination shall not be subject to collateral attack at a hearing before an arbitrator.

(c) The Secretary shall nominate not less than three arbitrators. Within 5 days the parties may indicate their order of preference from among those nominated. The Secretary will thereafter make a selection from among the nominees listed.

§ 25.6 Time; additional time after service by mail.

(a) In computing any period of time prescribed or allowed by the rules of this part, the date of the act, event, or default after which the designated period of time begins to run, is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a Federal legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a Federal legal holiday. When the period of time prescribed, or allowed, is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded from the computations. Whenever a party has the right or is required to do some act or take some other proceedings within a prescribed period after service of a notice or other paper upon the Secretary or a party and the notice is served upon him by mail, 3 days shall be added to the prescribed period: *Provided, however,* That 3 days shall not be added if any extension of such time may have been granted.

(b) When these rules require the filing of any paper, such document must be received by the Secretary or a party before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted.

§ 25.7 Fees; cost; expenses; decisions.

(a) Arbitrator's fees, per diem and travel expenses, and election expenses for notices, ballots, postage, rentals, assistance, etc., shall be borne entirely by the agency.

(b) The standard fee for the services of an arbitrator should be $100 per day. Travel and per diem should be paid at the maximum rate payable to Government employees under the Standardized Government Travel Regulations.

(c) The agency should provide the arbitrator with a copy of the transcript of testimony taken at the hearing, such transcript to be returned to the agency upon the issuance of the arbitrator's advisory decision.

(d) Costs involving assistance rendered by the Secretary's Office in connection with advisory decisions or determinations under section 11 of the order shall be limited to per diem, travel expenses and services on a time-worked basis.

(e) Upon request, the Secretary will make available copies of advisory decisions of arbitrators.

§ 25.8 Construction of rules.

The rules shall be liberally construed to effectuate the purposes and provisions of the order.

PART 26—EXEMPLARY REHABILITATION CERTIFICATES FOR EX-SERVICEMEN

Sec.
26.1 Purpose and scope.
26.2 Application for certificate.
26.3 Information in applications.
26.4 Consideration for issuance of certificate.
26.5 Matters to be considered.
26.6 Denials.
26.7 Replacements.

AUTHORITY: Sec. 1577, 80 Stat. 1017; 10 U.S.C. 1577.

SOURCE: 32 FR 7207, May 13, 1967, unless otherwise noted.

§ 26.1 Purpose and scope.

(a) Public Law 89-690 amends Part II of Subtitle A of Title 10, United States Code, in that it authorizes the award of Exemplary Rehabilitation Certificates to any person discharged or dismissed from the Armed Forces under conditions other than honorable, or who received a general discharge, upon his being able to establish that he has rehabilitated himself, and that his character, conduct, activities, and habits since he was so discharged or dismissed have been exemplary for at least 3 years.

(b) The Act does not affect, change, or supersede the previous discharge in any way, nor would it allow any veterans' benefits to which the individual would not otherwise be entitled. It would allow these persons to receive special counseling and job development assistance through the national system of public employment offices.

§ 26.2 Application for certificate.

Any person desiring to apply for an Exemplary Rehabilitation Certificate may do so by filing an application form prescribed by the Department of Labor. The form may be obtained from and should be filed with:

Bureau of Employment Security, U.S. Department of Labor, Washington, D.C. 20210, Attention: XRC.

§ 26.3 Information in applications.

The application referred to in § 26.2 requires among other things that the applicant:

(a) Submit the prescribed form to his present employer, if employed, to be completed with regard to the applicant's general reputation and employment record, notarized or witnessed and returned by the applicant;

(b) List the names and addresses of all prior employers for at least 3 years preceding the date of application;

(c) Submit on a prescribed form a set of fingerprints to be used for positive identification purposes;

(d) List all prior addresses for the preceding 3 years, in order that certified statements from chief law enforcement officers of towns, cities, or counties in which the applicant has resided may be received attesting to his general reputation, so far as police and court records are concerned;

(e) Provide notarized or witnessed statements from not less than 5 persons, other than relatives, attesting that they have personally known him for at least the 3 years preceding the date of application as a person of good reputation and exemplary conduct, and the extent of personal contact they have had with him.

§ 26.4 Consideration for issuance of certificate.

(a) The Administrator of the Manpower Administration or his authorized representative may consider an application for, and issue to that person, an Exemplary Rehabilitation Certificate if it is established to his satisfaction that such person has rehabilitated himself, that his character is good, and that his conduct, activities and habits since he was discharged or dismissed have been exemplary for a reasonable period of time, but not less than 3 years prior to the date of application.

(b) The Administrator shall supply a copy of each such Exemplary Rehabilitation Certificate which is issued, to the Secretary of Defense, who shall place such copy in the military personnel record of the individual to whom the certificate is issued.

[32 FR 7207, May 13, 1967, as amended at 35 FR 532, Jan. 15, 1970]

§ 26.5 Matters to be considered.

Matters to be considered in determining whether a Certificate is to be issued may include the following:

(a) All material submitted in accordance with § 26.3;

(b) The nature of the previous discharge and the reasons for it;

(c) The certified statements received from the chief law enforcement officers in the applicant's locale, as to his conduct for the previous 3 years;

(d) Federal Bureau of Investigation reports obtained through examination of the applicant's fingerprints;

(e) Such independent investigation as the Administrator may make, or as may be made by utilizing the services of the Civil Service Commission.

§ 26.6 Denials.

(a) If the Administrator of the Manpower Administration or his authorized representative has reason to deny an application for an Exemplary Rehabilitation Certificate, he shall send the applicant a proposal to deny the certificate together with a statement of the reasons therefor.

(b) Within 30 days following the issuance of a proposed denial, the applicant may request that further consideration be given to the matter. Such request shall be mailed to the Administrator, Manpower Administration, U.S. Department of Labor, Washington, D.C. 20210 Attention: XRC. It shall state the reasons why he feels the proposed denial is improper and may include any documents which he may wish to have considered. If the applicant wishes to appear in person or by counsel regarding this matter, he should so state in his request and should indicate whether he wishes to be heard in Washington, D.C., or at the nearest regional office of the U.S. Department of Labor. Thereafter, he will be notified of the time and place at which he will be heard and the officer who will hear the applicant's presentation and make recommendations to the Administrator.

(c) If no request for further consideration is made in accordance with paragraph (b) of this section, the proposed denial shall become the final action of the Department of Labor.

(d) Following the close of these proceedings, the entire record shall be considered and the Administrator will make his final decision which shall be transmitted to the applicant. The Administrator's final decision shall be subject to review only by the Secretary of Labor. Requests for such review must be submitted in writing to the Secretary of Labor, U.S. Department of Labor, Washington, D.C. 20210, not more than 30 days following the issuance of the Administrator's decision.

[32 FR 7207, May 13, 1967, as amended at 35 FR 532, Jan. 15, 1970]

§ 26.7 Replacements.

If an Exemplary Rehabilitation Certificate is lost or destroyed, a duplicate certificate may be obtained by mailing a request explaining its loss or destruction to: Manpower Administration, U.S. Department of Labor, Washington, D.C. 20210. Attention: XRC.

[32 FR 7207, May 13, 1967, as amended at 35 FR 532, Jan. 15, 1970]

PART 29—LABOR STANDARDS FOR THE REGISTRATION OF APPRENTICESHIP PROGRAMS

Sec.
29.1 Purpose and scope.
29.2 Definitions.
29.3 Eligibility and procedure for Bureau registration of a program.
29.4 Criteria for apprenticeable occupations.
29.5 Standards of apprenticeship.
29.6 Apprenticeship agreement.
29.7 Deregistration of Bureau-registered program.
29.8 Reinstatement of program registration.
29.9 Hearings.
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29.11 Complaints.
29.12 Recognition of State agencies.
29.13 Derecognition of State agencies.

AUTHORITY: Sec. 1, 50 Stat. 664, as amended (29 U.S.C. 50; 40 U.S.C. 276c; 5 U.S.C. 301); Reorganization Plan No. 14 of 1950, 64 Stat. 1267 (5 U.S.C. App., p. 534).

SOURCE: 42 FR 10139, Feb. 18, 1977, unless otherwise noted.

§ 29.1 Purpose and scope.

(a) The National Apprenticeship Act of 1937, section 1 (29 U.S.C. 50), authorizes and directs the Secretary of Labor "to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Office of Education under the Department of Health, Education, and Welfare * * *." Section 2 of the Act authorizes the Secretary of Labor to "publish information relating to existing and proposed labor standards of apprenticeship," and to "appoint national advisory committees * * *." (29 U.S.C. 50a).

(b) The purpose of this part is to set forth labor standards to safeguard the welfare of apprentices, and to extend the application of such standards by prescribing policies and procedures concerning the registration, for certain Federal purposes, or acceptable apprenticeship programs with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. These labor standards, policies and procedures cover the registration, cancellation and deregistration or apprenticeship programs and of apprenticeship agreements; the recognition of a State agency as the appropriate agency for registering local apprenticeship programs for certain Federal purposes; and matters relating thereto.

(c) For further information about this Part 29, contact: Deputy Administrator, Bureau of Apprenticeship and Training, Employment and Training Administration, Room 5000, Patrick Henry Building, Washington, D.C. 20213, Telephone number (202) 376-6585.

§ 29.2 Definitions.

As used in ths part:

(a) "Department" shall mean the U.S. Department of Labor.

(b) "Secretary" shall mean the Secretary of Labor or any person specifically designated by him.

(c) "Bureau" shall mean the Bureau of Apprenticeship and Training, Employment and Training Administration.

(d) "Administrator" shall mean the Administrator of the Bureau of Apprenticeship and Training, or any person specifically designated by him.

(e) "Apprentice" shall mean a worker at least 16 years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade as defined in § 29.4 under standards of apprenticeship fulfilling the requirements of § 29.5.

(f) "Apprenticeship program" shall mean a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including such matters as the requirement for a written apprenticeship agreement.

(g) "Sponsor" shall mean any person, association, committee, or organization operating an apprenticeship program and in whose name the program is (or is to be) registered or approved.

(h) "Employer" shall mean any person or organization employing an apprentice whether or not such person or organization is a party to an apprenticeship agreement with the apprentice.

(i) "Apprenticeship committee" shall mean those persons designated by the sponsor to act for it in the administration of the program. A committee may be "joint," i.e., it is composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s) and has been established to conduct, operate, or administer an apprenticeship program and enter into apprenticeship agreements with apprentices. A committee may be "unilateral" or "non-joint" and shall mean a program sponsor in which a bona fide collective bargaining agent is not a participant.

(j) "Apprenticeship agreement" shall mean a written agreement between an apprentice and either his employer, or an apprenticeship committee acting as agent for employer(s), which agreement contains the terms and conditions of the employment and training of the apprentice.

(k) "Federal purposes" includes any Federal contract, grant, agreement or arrangement dealing with apprenticeship; and any Federal financial or other assistance, benefit, privilege, contribution, allowance, exemption, preference or right pertaining to apprenticeship.

(l) "Registration of an apprenticeship program" shall mean the acceptance and recording of such program by the Bureau of Apprenticeship and Training, or registration and/or approval by a recognized State Apprenticeship Agency, as meeting the basic standards and requirements of the Department for approval of such program for Federal purposes. Approval is evidenced by a Certificate of Registration or other written indicia.

(m) "Registration of an apprenticeship agreement" shall mean the acceptance and recording thereof by the Bureau or a recognized State Apprenticeship Agency as evidence of the participation of the apprentice in a particular registered apprenticeship program.

(n) "Certification" shall mean written approval by the Bureau of:

(1) A set of apprenticeship standards developed by a national committee or organization, joint or unilateral, for policy or guideline use by local affiliates, as substantially conforming to the standards of apprenticeship set forth in § 29.5; or

(2) An individual as eligible for probationary employment as an apprentice under a registered apprenticeship program.

(o) "Recognized State Apprenticeship Agency" or "recognized State Apprenticeship Council" shall mean an organization approved by the Bureau as an agency or council which has been properly constituted under an acceptable law or Executive order, and has been approved by the Bureau as the appropriate body for State registration and/or approval of local apprenticeship programs and agreements for Federal purposes.

(p) "State" shall mean any of the 50 States of the United States, the District of Columbia, or any territory or possession of the United States.

(q) "Related instruction" shall mean an organized and systematic form of instruction designed to provide the apprenticeship with knowledge of the theoretical and technical subjects related to his/her trade.

(r) "Cancellation" shall mean the termination of the registration or approval status of a program at the request of the sponsor or termination of an apprenticeship agreement at the request of the apprentice.

(s) "Registration agency" shall mean the Bureau or a recognized State Apprenticeship Agency.

§ 29.3 Eligibility and procedure for Bureau registration of a program.

(a) Eligibility for various Federal purposes is conditioned upon a program's conformity with apprenticeship program standards published by the Secretary of Labor in this part. For a program to be determined by the Secretary of Labor as being in conformity with these published standards the program must be registered with the Bureau or registered with and/or approved by a State Apprenticeship Agency or Council recognized by the Bureau. Such determination by the Secretary is made only by such registration.

(b) No apprenticeship program or agreement shall be eligible for Bureau registration unless (1) it is in conformity with the requirements of this part and the training is in an apprenticeable occupation having the characteristics set forth in § 29.4 herein, and (2) it is in conformity with the requirements of the Department's regulation on "Equal Employment Opportunity in Apprenticeship and Training" set forth in 29 CFR Part 30, as amended.

(c) Except as provided under paragraph (d) of this section, apprentices must be individually registered under a registered program. Such registration may be effected:

(1) By filing copies of each apprenticeship agreement; or

(2) Subject to prior Bureau approval, by filing a master copy of such agreement followed by a listing of the name, and other required data, of each individual when apprenticed.

(d) The names of persons in their first 90 days of probationary employment as an apprentice under an apprenticeship program registered by the Bureau or a recognized State Apprenticeship Agency, if not individually registered under such program, shall be submitted immediately after employment to the Bureau or State Apprenticeship Agency for certification to establish the apprentice as eligible for such probationary employment.

(e) The appropriate registration office must be promptly notified of the cancellation, suspension, or termination of any apprenticeship agreement, with cause for same, and of apprenticeship completions.

(f) Operating apprenticeship programs when approved by the Bureau shall be accorded registration evidenced by a Certificate of Registration. Programs approved by recognized State Apprenticeship Agencies shall be accorded registration and/or approval evidenced by a similar certificate or other written indicia. When approved by the Bureau, national apprenticeship standards for policy or guideline use shall be accorded certification, evidenced by a certificate attesting to the Bureau's approval.

(g) Any modification(s) or change(s) to registered or certified programs shall be promptly submitted to the registration office and, if approved, shall be recorded and acknowledged as an amendment to such program.

(h) Under a program proposed for registration by an employer or employers' association, where the standards, collective bargaining agreement or other instrument, provides for participation by a union in any manner in the operation of the substantive matters of the apprenticeship program, and such participation is exercised, written acknowledgement of union agreement or "no objection" to the registration is required. Where no such participation is evidenced and practiced, the employer or employers' association shall simultaneously furnish to the union, if any, which is the collective bargaining agent of the employees to be trained, a copy of its application for registration and of the apprenticeship program. The registration agency shall provide a reasonable time period of not less than 30 days nor more than 60 days for receipt of union comments, if any, before final action on the application for registration and/or approval.

(i) Where the employees to be trained have no collective bargaining agent, an apprenticeship program may be proposed for registration by an employer or group of employers.

[42 FR 10139, Feb. 18, 1977; 42 FR 30836, June 17, 1977]

§ 29.4 Criteria for apprenticeable occupations.

An apprenticeable occupation is a skilled trade which possesses all of the following characteristics:

(a) It is customarily learned in a practical way through a structured, systematic program of on-the-job supervised training.

(b) It is clearly identified and commonly recognized throughout an industry.

(c) It involves manual, mechanical or technical skills and knowledge which require a minimum of 2,000 hours of on-the-job work experience.

(d) It requires related instruction to supplement the on-the-job training.

§ 29.5 Standards of apprenticeship.

An apprenticeship program, to be eligible for registration/approval by a registration/approval agency, shall conform to the following standards:

(a) The program is an organized, written plan embodying the terms and conditions of employment, training, and supervision of one or more apprentices in the apprenticeable occupation, as defined in this part, and subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

(b) The program standards contain the equal opportunity pledge prescribed in 29 CFR 30.3(b) and, when applicable, an affirmative action plan in accordance with 29 CFR 30.4, a selection method authorized in 29 CFR 30.5, or similar requirements expressed in a State Plan for Equal Employment Opportunity in Apprenticeship adopted pursuant to 29 CFR Part 30 and approved by the Department, and provisions concerning the following:

(1) The employment and training of the apprentice in a skilled trade;

(2) A term of apprenticeship, not less than 2,000 hours of work experience, consistent with training requirements as established by industry practice;

(3) An outline of the work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate time to be spent in each major process;

(4) Provision for organized, related and supplemental instruction in technical subjects related to the trade. A minimum of 144 hours for each year of apprenticeship is recommended. Such instruction may be given in a classroom through trade or industrial courses, or by correspondence courses of equivalent value, or other forms of self-study approved by the registration/approval agency.

(5) A progressively increasing schedule of wages to be paid the apprentice consistent with the skill acquired. The entry wage shall be not less than the minimum wage prescribed by the Fair Labor Standards Act, where applicable, unless a higher wage is required by other applicable Federal law, State law, respective regulations, or by collective bargaining agreement;

(6) Periodic review and evaluation of the apprentice's progress in job performance and related instruction; and the maintenance of appropriate progress records;

(7) The numeric ratio of apprentices to journeymen consistent with proper

supervision, training, safety, and continuity of employment, and applicable provisions in collective bargaining agreements, except where such ratios are expressly prohibited by the collective bargaining agreements. The ratio language shall be specific and clear as to application in terms of jobsite, work force, department or plant;

(8) A probationary period reasonable in relation to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship;

(9) Adequate and safe equipment and facilities for training and supervision, and safety training for apprentices on the job and in related instruction;

(10) The minimum qualifications required by a sponsor for persons entering the apprenticeship program, with an eligible starting age not less than 16 years;

(11) The placement of an apprentice under a written apprenticeship agreement as required by the State apprenticeship law and regulation, or the Bureau where no such State law or regulation exists. The agreement shall directly, or by reference, incorporate the standards of the program as part of the agreement;

(12) The granting of advanced standing or credit for previously acquired experience, training, or skills for all applicants equally, with commensurate wages for any progression step so granted;

(13) Transfer of employer's training obligation when the employer is unable to fulfill his obligation under the apprenticeship agreement to another employer under the same program with consent of the apprentice and apprenticeship committee or program sponsor;

(14) Assurance of qualified training personnel and adequate supervision on the job;

(15) Recognition for successful completion of apprenticeship evidenced by an appropriate certificate;

(16) Identification of the registration agency;

(17) Provision for the registration, cancellation and deregistration of the program; and requirement for the prompt submission of any modification or amendment thereto;

(18) Provision for registration of apprenticeship agreements, modifications, and amendments; notice to the registration office of persons who have successfully completed apprenticeship programs; and notice of cancellations, suspensions and terminations of apprenticeship agreements and causes therefor;

(19) Authority for the termination of an apprenticeship agreement during the probationary period by either party without stated cause;

(20) A statement that the program will be conducted, operated and administered in conformity with applicable provisions of 29 CFR Part 30, as amended, or a State EEO in apprenticeship plan adopted pursuant to 29 CFR Part 30 and approved by the Department;

(21) Name and address of the appropriate authority under the program to receive, process and make disposition of complaints;

(22) Recording and maintenance of all records concerning apprenticeship as may be required by the Bureau or recognized State Apprenticeship Agency and other applicable law.

[42 FR 10139, Feb. 18, 1977; 42 FR 30836, June 17, 1977]

§ 29.6 Apprenticeship agreement.

The apprenticeship agreement shall contain explicitly or by reference:

(a) Names and signatures of the contracting parties (apprentice, and the program sponsor or employer), and the signature of a parent or guardian if the apprentice is a minor.

(b) The date of birth of apprentice.

(c) Name and address of the program sponsor and registration agency.

(d) A statement of the trade or craft in which the apprentice is to be trained, and the beginning date and term (duration) of apprenticeship.

(e) A statement showing (1) the number of hours to be spent by the apprentice in work on the job, and (2) the number of hours to be spent in related and supplemental instruction which is recommended to be not less than 144 hours per year.

(f) A statement setting forth a schedule of the work processes in the trade or industry divisions in which the apprentice is to be trained and the approximate time to be spent at each process.

(g) A statement of the graduated scale of wages to be paid the apprentice and whether or not the required school time shall be compensated.

(h) Statements providing:

(1) For a specific period of probation during which the apprenticeship agreement may be terminated by either party to the agreement upon written notice to the registration agency;

(2) That, after the probationary period, the agreement may be cancelled at the request of the apprentice, or may be suspended, cancelled, or terminated by the sponsor, for good cause, with due notice to the apprentice and a reasonable opportunity for corrective action, and with written notice to the apprentice and to the registration agency of the final action taken.

(i) A reference incorporating as part of the agreement the standards of the apprenticeship program as it exists on the date of the agreement and as it may be amended during the period of the agreement.

(j) A statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training, without discrimination because of race, color, religion, national origin, or sex.

(k) Name and address of the appropriate authority, if any, designated under the program to receive, process and make disposition of controversies or differences arising out of the apprenticeship agreement when the controversies or differences cannot be adjusted locally or resolved in accordance with the established trade procedure or applicable collective bargaining provisions.

§ 29.7 Deregistration of Bureau-registered program.

Deregistration of a program may be effected upon the voluntary action of the sponsor by a request for cancellation of the registration, or upon reasonable cause, by the Bureau instituting formal deregistration proceedings in accordance with the provisions of this part.

(a) *Request by sponsor.* The registration officer may cancel the registration of an apprenticeship program by written acknowledgment of such request stating, but not limited to, the following matters:

(1) The registration is canceled at sponsor's request, and effective date thereof;

(2) That, within 15 days of the date of the acknowledgment, the sponsor shall notify all apprentices of such cancellation and the effective date; that such cancellation automatically deprives the apprentice of his/her individual registration; and that the deregistration of the program removes the apprentice from coverage for Federal purposes which require the Secretary of Labor's approval of an apprenticeship program.

(b) *Formal deregistration*—(1) *Reasonable cause.* Deregistration proceedings may be undertaken when the apprenticeship program is not conducted, operated, and administered in accordance with the registered provisions or the requirements of this part, except that deregistration proceedings for violation of equal opportunity requirements shall be processed in accordance with the provisions under 29 CFR Part 30, as amended;

(2) Where it appears the program is not being operated in accordance with the registered standards or with requirements of this part, the registration officer shall so notify the program sponsor in writing;

(3) The notice shall (i) be sent by registered or certified mail, with return receipt requested; (ii) state the shortcoming(s) and the remedy required; and (iii) state that a determination of reasonable cause for deregistration will be made unless corrective action is effected within 30 days;

(4) Upon request by the sponsor for good cause, the 30-day term may be extended for another 30 days. During the period for correction, the sponsor shall be assisted in every reasonable way to achieve conformity;

(5) If the required correction is not effected within the allotted time, the registration officer shall send a notice

to the sponsor, by registered or certified mail, return receipt requested, stating the following:

(i) The notice is sent pursuant to this subsection;

(ii) Certain deficiencies (stating them) were called to sponsor's attention and remedial measures requested, with dates of such occasions and letters; and that the sponsor has failed or refused to effect correction;

(iii) Based upon the stated deficiencies and failure of remedy, a determination of reasonable cause has been made and the program may be deregistered unless, within 15 days of the receipt of this notice, the sponsor requests a hearing;

(iv) If a request for a hearing is not made, the entire matter will be submitted to the Administrator, BAT, for a decision on the record with respect to deregistration.

(6) If the sponsor has not requested a hearing, the registration officer shall transmit to the Administrator, BAT, a report containing all pertinent facts and circumstances concerning the nonconformity, including the findings and recommendation for deregistration, and copies of all relevant documents and records. Statements concerning interviews, meetings and conferences shall include the time, date, place, and persons present. The Administrator shall make a final order on the basis of the record before him.

(7) If the sponsor requests a hearing, the registration officer shall transmit to the Secretary, through the Administrator, a report containing all the data listed in paragraph (6) above. The Secretary shall convene a hearing in accordance with § 29.9; and shall make a final decision on the basis of the record before him including the proposed findings and recommended decision of the hearing officer.

(8) At his discretion, the Secretary may allow the sponsor a reasonable time to achieve voluntary corrective action. If the Secretary's decision is that the apprenticeship program is not operating in accordance with the registered provisions or requirements of this part, the apprenticeship program shall be deregistered. In each case in which reregistration is ordered, the Secretary shall make public notice of the order and shall notify the sponsor.

(9) Every order of deregistration shall contain a provision that the sponsor shall, within 15 days of the effective date of the order, notify all registered apprentices of the deregistration of the program; the effective date thereof; that such cancellation automatically deprives the apprentice or his/her individual registration; and that the deregistration removes the apprentice from coverage for Federal purposes which require the Secretary of Labor's approval of an apprenticeship program.

§ 29.8 Reinstatement of program registration.

Any apprenticeship program deregistered pursuant to this part may be reinstated upon presentation of adequate evidence that the apprenticeship program is operating in accordance with this part. Such evidence shall be presented to the Administrator, BAT, if the sponsor had not requested a hearing, or to the Secretary, if an order of deregistration was entered pursuant to a hearing.

§ 29.9 Hearings.

(a) Within 10 days of his receipt of a request for a hearing, the Secretary shall designate a hearing officer. The hearing officer shall give reasonable notice of such hearing by registered mail, return receipt requested, to the appropriate sponsor. Such notice shall include (1) a reasonable time and place of hearing, (2) a statement of the provisions of this part pursuant to which the hearing is to be held, and (3) a concise statement of the matters pursuant to which the action forming the basis of the hearing is proposed to be taken.

(b) The hearing officer shall regulate the course of the hearing. Hearings shall be informally conducted. Every party shall have the right to counsel, and a fair opportunity to present his/her case, including such cross-examination as may be appropriate in the circumstances. Hearings officers shall make their proposed findings and recommended decisions to the Secretary upon the basis of the record before them.

§ 29.10 Limitations.

Nothing in this part or in any apprenticeship agreement shall operate to invalidate:

(a) Any apprenticeship provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards; or

(b) Any special provision for veterans, minority persons or females in the standards, apprentice qualifications or operation of the program, or in the apprenticeship agreement, which is not otherwise prohibited by law, Executive order, or authorized regulation.

§ 29.11 Complaints.

(a) This section is not applicable to any complaint concerning discrimination or other equal opportunity matters; all such complaints shall be submitted, processed and resolved in accordance with applicable provisions in 29 CFR Part 30, as amended, or applicable provisions of a State Plan for Equal Employment Opportunity in Apprenticeship adopted pursuant to 29 CFR Part 30 and approved by the Department.

(b) Except for matters described in paragraph (a) of this section, any controversy or difference arising under an apprenticeship agreement which cannot be adjusted locally and which is not covered by a collective bargaining agreement, may be submitted by an apprentice, or his/her authorized representative, to the appropriate registration authority, either Federal or State, which has registered and/or approved the program in which the apprentice is enrolled, for review. Matters covered by a collective bargaining agreement are not subject to such review.

(c) The complaint, in writing and signed by the complainant, or authorized representative, shall be submitted within 60 days of the final local decision. It shall set forth the specific matter(s) complained of, together with all relevant facts and circumstances. Copies of all pertinent documents and correspondence shall accompany the complaint.

(d) The Bureau or recognized State Apprenticeship Agency, as appropriate, shall render an opinion within 90 days after receipt of the complaint, based upon such investigation of the matters submitted as may be found necessary, and the record before it. During the 90-day period, the Bureau or State agency shall make reasonable efforts to effect a satisfactory resolution between the parties involved. If so resolved, the parties shall be notified that the case is closed. Where an opinion is rendered, copies of same shall be sent to all interested parties.

(e) Nothing in this section shall be construed to require an apprentice to use the review procedure set forth in this section.

(f) A State Apprenticeship Agency may adopt a complaint review procedure differing in detail from that given in this section provided it is proposed and has been approved in the recognition of the State Apprenticeship Agency accorded by the Bureau.

§ 29.12 Recognition of State agencies.

(a) The Secretary's recognition of a State Apprenticeship Agency or Council (SAC) gives the SAC the authority to determine whether an apprenticeship program conforms with the Secretary's published standards and the program is, therefore, eligible for those Federal purposes which require such a determination by the Secretary. Such recognition of a SAC shall be accorded by the Secretary upon submission and approval of the following:

(1) An acceptable State apprenticeship law (or Executive order), and regulations adopted pursuant thereto;

(2) Acceptable composition of the State Apprenticeship Council (SAC);

(3) An acceptable State Plan for Equal Employment Opportunity in Apprenticeship;

(4) A description of the basic standards, criteria, and requirements for program registration and/or approval; and

(5) A description of policies and operating procedures which depart from

or impose requirements in addition to those prescribed in this part.

(b) *Basic requirements.* Generally the basic requirements under the matters covered in paragraph (a) of this section shall be in conformity with applicable requirements as set forth in this part. Acceptable State provisions shall:

(1) Establish the apprenticeship agency in (i) the State Department of Labor, or (ii) in that agency of State government having jurisdiction of laws and regulations governing wages, hours, and working conditions, or (iii) that State agency presently recognized by the Bureau, with a State official empowered to direct the apprenticeship operation;

(2) Require that the State Apprenticeship Council be composed of persons familiar with apprenticeable occupations and an equal number of representatives of employer and of employee organizations and may include public members who shall not number in excess of the number named to represent either employer or employee organizations. Each representative so named shall have one vote. Ex officio members may be added to the council but they shall have no vote except where such members have a vote according to the established practice of a presently recognized council. If the State official who directs the apprenticeship operation is a member of the council, provision may be made for the official to have a tie-breaking vote;

(3) Clearly delineate the respective powers and duties of the State official and of the council;

(4) Clearly designate the officer or body authorized to register and deregister apprenticeship programs and agreements;

(5) Establish policies and procedures to promote equality of opportunity in apprenticeship programs pursuant to a State Plan for Equal Employment Opportunity in Apprenticeship which adopts and implements the requirements of 29 CFR Part 30, as amended, and to require apprenticeship programs to operate in conformity with such State Plan and 29 CFR Part 30, as amended;

(6) Prescribe the contents of apprenticeship agreements;

(7) Limit the registration of apprenticeship programs to those providing training in "apprenticeable" occupations as defined in § 29.4;

(8) Provide that apprenticeship programs and standards of employers and unions in other than the building and construction industry, which jointly form a sponsoring entity on a multistate basis and are registered pursuant to all requirements of this part by any recognized State Apprenticeship Agency/Council or by the Bureau, shall be accorded registration or approval reciprocity by any other State Apprenticeship Agency/Council or office of the Bureau if such reciprocity is requested by the sponsoring entity;

(9) Provide for the cancellation, deregistration and/or termination of approval of programs, and for temporary suspension, cancellation, deregistration and/or termination of approval of apprenticeship agreements; and

(10) Provide that under a program proposed for registration by an employer or employers' association, and where the standards, collective bargaining agreement or other instrument provides for participation by a union in any manner in the operation of the substantive matters of the apprenticeship program, and such participation is exercised, written acknowledgment of union agreement or "no objection" to the registration is required. Where no such participation is evidenced and practiced, the employer or employers' association shall simultaneously furnish to the union, if any, which is the collective bargaining agent of the employees to be trained, a copy of its application for registration and of the apprenticeship program. The State agency shall provide a reasonable time period of not less than 30 days nor more than 60 days for receipt of union comments, if any, before final action on the application for registration and/or approval.

(c) *Application for recognition.* A State Apprenticeship Agency/Council desiring recognition shall submit to the Administrator, BAT, the documentation specified in § 29.12(a) of this part. A currently recognized Agency/Council desiring continued recognition by the Bureau shall submit to the Administrator the documentation specified in § 29.12(a) of this part on or before July 18, 1977. An extension of time within which to comply with the requirements of this part may be granted by the Administrator for good cause upon written request by the State agency but the Administrator shall not extend the time for submission of the documentation required by § 29.12(a). The recognition of currently recognized Agencies/Councils shall continue until July 18, 1977 and during any extension period granted by the Administrator.

(d) *Appeal from denial of recognition.* The denial by the Administrator of a State agency's application for recognition under this part shall be in writing and shall set forth the reasons for the denial. The notice of denial shall be sent to the applicant by certified mail, return receipt requested. The applicant may appeal such a denial to the Secretary by mailing or otherwise furnishing to the Administrator, within 30 days of receipt of the denial, a notice of appeal addressed to the Secretary and setting forth the following items:

(1) A statement that the applicant appeals to the Secretary to reverse the Administrator's decision to deny its application;

(2) The date of the Administrator's decision and the date the applicant received the decision;

(3) A summary of the reasons why the applicant believes that the Administrator's decision was incorrect;

(4) A copy of the application for recognition and subsequent modifications, if any;

(5) A copy of the Administrator's decision of denial. Within 10 days of receipt of a notice of appeal, the Secretary shall assign an Administrative Law Judge to conduct hearings and to recommend findings of fact and conclusions of law. The proceedings shall be informal, witnesses shall be sworn, and the parties shall have the right to counsel and of cross-examination.

The Administrative Law Judge shall submit the recommendations and conclusions, together with the entire record to the Secretary for final decision. The Secretary shall make his final decision in writing within 30 days of the Administrative Law Judge's submission. The Secretary may make a decision granting recognition conditional upon the performance of one or more actions by the applicant. In the event of such a conditional decision, recognition shall not be effective until the applicant has submitted to the Secretary evidence that the required actions have been performed and the Secretary has communicated to the applicant in writing that he is satisfied with the evidence submitted.

(e) *State apprenticeship programs.* (1) An apprenticeship program submitted for registration with a State Apprenticeship Agency recognized by the Bureau shall, for Federal purposes, be in conformity with the State apprenticeship law, regulations, and with the State Plan for Equal Employment Opportunity in Apprenticeship as submitted to and approved by the Bureau pursuant to 29 CFR 30.15, as amended;

(2) In the event that a State Apprenticeship Agency is not recognized by the Bureau for Federal purposes, or that such recognition has been withdrawn, or if no State Apprenticeship Agency exists, registration with the Bureau may be requested. Such registration shall be granted if the program is conducted, administered and operated in accordance with the requirements of this part and the equal opportunity regulation in 29 CFR Part 30, as amended.

§ 29.13 Derecognition of State agencies.

The recognition for Federal purposes of a State Apprenticeship Agency or State Apprenticeship Council (hereinafter designated "respondent"), may be withdrawn for the failure to fulfill, or operate in conformity with, the requirements of this part. Derecognition proceedings for reasonable cause shall be instituted in accordance with the following:

(a) Derecognition proceedings for failure to adopt or properly enforce a State Plan for Equal Employment Opportunity in Apprenticeship shall be processed in accordance with the procedures prescribed in 29 CFR 30.15.

(b) For causes other than those under paragraph (a) above, the Bureau shall notify the respondent and appropriate State sponsors in writing, by certified mail, with return receipt requested. The notice shall set forth the following:

(1) That reasonable cause exists to believe that the respondent has failed to fulfill or operate in conformity with the requirements of this part;

(2) The specific areas of nonconformity;

(3) The needed remedial measures; and

(4) That the Bureau proposes to withdraw recognition for Federal purposes unless corrective action is taken, or a hearing request mailed, within 30 days of the receipt of the notice.

(c) If, within the 30-day period, respondent:

(1) Complies with the requirements, the Bureau shall so notify the respondent and State sponsors, and the case shall be closed;

(2) Fails to comply or to request a hearing, the Bureau shall decide whether recognition should be withdrawn. If the decision is in the affirmative, the Administrator shall forward all pertinent data to the Secretary, together with the findings and recommendation. The Secretary shall make the final decision, based upon the record before him.

(3) Requests a hearing, the Administrator shall forward the request to the Secretary, and the procedures under § 29.9 shall be followed, with notice thereof to the State apprenticeship sponsors.

(d) If the Secretary determines to withdraw recognition for Federal purposes, he shall notify the respondent and the State sponsors of such withdrawal and effect public notice of such withdrawal. The notice to the sponsors shall state that, 30 days after the date of the Secretary's order withdrawing recognition of the State agency, the Department shall cease to recognize, for Federal purposes, each apprenticeship program registered with the State agency unless, within that time, the State sponsor requests registration with the Bureau. The Bureau may grant the request for registration contingent upon its finding that the State apprenticeship program is operating in accordance with the requirements of this part and of 29 CFR Part 30, as amended. The Bureau shall make a finding on this issue within 30 days of receipt of the request. If the finding is in the negative, the State sponsor shall be notified in writing that the contingent Bureau registration has been revoked. If the finding is in the affirmative, the State sponsor shall be notified in writing that the contingent Bureau registration is made permanent.

(e) If the sponsor fails to request Bureau registration, or upon a finding of noncompliance pursuant to a contingent Bureau registration, the written notice to such State sponsor shall further advise the recipient that any actions or benefits applicable to recognition "for Federal purposes" are no longer available to participants in its apprenticeship program.

(f) Such notice shall also direct the State sponsor to notify, within 15 days, all its registered apprentices of the withdrawal of recognition for Federal purposes; the effective date thereof; and that such withdrawal removes the apprentice from coverage under any Federal provision applicable to his/her individual registration under a program recognized or registered by the Secretary of Labor for Federal purposes.

(g) A State Apprenticeship Agency or Council whose recognition has been withdrawn pursuant to this part may have its recognition reinstated upon presentation of adequate evidence that it has fulfilled, and is operating in accordance with, the requirements of this part.

PART 30—EQUAL EMPLOYMENT OPPORTUNITY IN APPRENTICESHIP AND TRAINING

Sec.
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AUTHORITY: Sec. 1, 50 Stat. 664, as amended; 29 U.S.C. 50; 40 U.S.C. 276c; 5 U.S.C. 301; Reorganization Plan No. 14 of 1950, 64 Stat. 1267, 3 CFR 1949-53 Comp. p. 1007.

SOURCE: 43 FR 20760, May 12, 1978, unless otherwise noted.

§ 30.1 Scope and purpose.

This part sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and in state apprenticeship programs registered with recognized state apprenticeship agencies. These policies and procedures apply to the recruitment and selection of apprentices, and to all conditions of employment and training during apprenticeship. The procedures established provide for review of apprenticeship programs, for registering apprenticeship programs, for processing complaints, and for deregistering noncomplying apprenticeship programs. This part also provides policies and procedures for continuation or withdrawal of recognition of state agencies for registering of apprenticeship programs for Federal purposes. The purpose of this part is to promote equality of opportunity in apprenticeship by prohibiting discrimination based on race, color, religion, national origin, or sex in apprenticeship programs, by requiring affirmative action to provide equal opportunity in such apprenticeship programs, and by coordinating this part with other equal opportunity programs.

§ 30.2 Definitions.

(a) "Department" means the U.S. Department of Labor.

(b) "Employer" means any person or organization employing an apprentice whether or not the apprentice is enrolled with such person or organization or with some other person or organization.

(c) "Apprenticeship program" means a program registered by the Department and evidenced by a Certificate of Registration as meeting the standards of the Department for apprenticeship, but does not include a state apprenticeship program.

(d) "Sponsor" means any person or organization operating an apprenticeship program, irrespective of whether such person or organization is an employer.

(e) "Secretary" means the Secretary of Labor, the Assistant Secretary of Labor for Employment and Training, or any person specifically designated by either of them.

(f) "State Apprenticeship Council" means a state apprenticeship council or other state agency in any of the 50 states, the District of Columbia, or any territory or possession of the United States, which is recognized by the Department as the appropriate agency for registering programs for Federal purposes.

(g) "State apprenticeship program" means a program registered with a State Apprenticeship Council and evidenced by a Certificate of Registration or other appropriate document as meeting the standards of the State Apprenticeship Council for apprenticeship.

(h) "State program sponsor" means any person or organization operating a State apprenticeship program, irrespective of whether such person or organization is an employer.

§ 30.3 Equal opportunity standards.

(a) *Obligations of sponsors.* Each sponsor of an apprenticeship program shall:

(1) Recruit, select, employ, and train apprentices during their apprenticeship, without discrimination because of race, color, religion, national origin, or sex; and

(2) Uniformly apply rules and regulations concerning apprentices, including but not limited to, equality of wages, periodic advancement, promotion, assignment of work, job performance, rotation among all work processes of the trade, imposition of penalties or other disciplinary action, and all other aspects of the apprenticeship

program administration by the program sponsor; and

(3) Take affirmative action to provide equal opportunity in apprenticeship, including adoption of an affirmative action plan as required by this part.

(b) *Equal opportunity pledge.* Each sponsor of an apprenticeship program shall include in its standards the following equal opportunity pledge:

The recruitment, selection, employment, and training of apprentices during their apprenticeship, shall be without discrimination because of race, color, religion, national origin, or sex. The sponsor will take affirmative action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required under Title 29 of the Code of Federal Regulations, Part 30.

(c) *Programs presently registered.* Each sponsor of a program registered with the Department as of the effective date of this part shall within 90 days of that effective date take the following action:

(1) Include in the standards of its apprenticeship program the equal opportunity pledge prescribed by paragraph (b) of this section;

(2) Adopt an affirmative action plan required by § 30.4; and

(3) Adopt a selection procedure required by § 30.5. A sponsor adopting a selection method under § 30.5(b) (1), (2), or (3) shall prepare, and have available for submission upon request, copies of its amended standards, affirmative action plans, and selection procedure. A sponsor adopting a selection method under § 30.5(b)(4) shall submit to the Department copies of its standards, affirmative action plan and selection procedure in accordance with the requirements of § 30.5(b)(4)(i)(a).

(d) *Sponsors seeking new registration.* A sponsor of a program seeking new registration with the Department shall submit copies of its proposed standards, affirmative action plan, selection procedures, and such other information as may be required. The program shall be registered if such standards, affirmative action plan, and selection procedure meet the requirements of this part.

(e) *Programs subject to approved equal employment opportunity programs.* A sponsor shall not be required to adopt an affirmative action plan under § 30.4 or a selection procedure under § 30.5 if it submits to the Department satisfactory evidence that it is in compliance with an equal employment opportunity program providing for the selection of apprentices and for affirmative action in apprenticeship including goals and timetables for women and minorities which has been approved as meeting the requirements of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e et seq.) and its implementing regulations published in Title 29 of the Code of Federal Regulations, Chapter XIV or Executive Order 11246, as amended, and its implementing regulations at Title 41 of the Code of Federal Regulations, Chapter 60: *Provided,* That programs approved, modified or renewed subsequent to the effective date of this amendment will qualify for this exception only if the goals and timetables for minorities and women for the selection of apprentices provided for in such programs are equal to or greater than the goals required under this part.

(f) *Program with fewer than five apprentices.* A sponsor of a program in which fewer than five apprentices are indentured shall not be required to adopt an affirmative action plan under § 30.4 or a selection procedure under § 30.5: *Provided,* That such program was not adopted to circumvent the requirements of this part.

§ 30.4 Affirmative action plans.

(a) *Adoption of affirmative action plans.* A sponsor's commitment to equal opportunity in recruitment, selection, employment, and training of apprentices shall include the adoption of a written affirmative action plan.

(b) *Definition of affirmative action.* Affirmative action is not mere passive nondiscrimination. It includes procedures, methods, and programs for the identification, positive recruitment, training, and motivation of present and potential minority and female (minority and nonminority) apprentices including the establishment of goals and timetables. It is action which will equalize opportunity in apprenticeship so as to allow full utilization of the work potential of minorities and women. The overall result to be sought is equal opportunity in apprenticeship for all individuals participating in or seeking entrance to the Nation's labor force.

(c) *Outreach and positive recruitment.* An acceptable affirmative action plan must also include adequate provision for outreach and positive recruitment that would reasonably be expected to increase minority and female participation in apprenticeship by expanding the opportunity of minorities and women to become eligible for apprenticeship selection. In order to achieve these objectives, sponsors shall undertake activities such as those listed below. It is not contemplated that each sponsor necessarily will include all the listed activities in its affirmative action program. The scope of the affirmative action program will depend on all the circumstances including the size and type of the program and its resources. However, the sponsor will be required to undertake a significant number of appropriate activities in order to enable it to meet its obligations under this part. The affirmative action plan shall set forth the specific steps the sponsor intends to take in the areas listed below. Whenever special circumstances warrant, the Department may provide such financial or other assistance as it deems necessary to implement the requirements of this paragraph.

(1) Dissemination of information concerning the nature of the apprenticeship, requirements for admission to apprenticeship, availability of apprenticeship opportunities, sources of apprenticeship applications, and the equal opportunity policy of the sponsor. For programs accepting applications only at specified intervals, such information shall be disseminated at least 30 days in advance of the earliest date for application at each interval. For programs customarily receiving applications throughout the year, such information shall be regularly disseminated but not less than semiannually. Such information shall be given to the Department, local schools, employment service offices, women's centers, outreach programs and community organizations which can effectively reach minorities and women, and shall be published in newspapers which are circulated in the minority community and among women, as well as in the general areas in which the program sponsor operates.

(2) Participation in annual workshops conducted by employment service agencies for the purpose of familiarizing school, employment service and other appropriate personnel with the apprenticeship system and current opportunities therein.

(3) Cooperation with local school boards and vocational education systems to develop programs for preparing students to meet the standards and criteria required to qualify for entry into apprenticeship programs.

(4) Internal communication of the sponsor's equal opportunity policy in such a manner as to foster understanding, acceptance, and support among the sponsor's various officers, supervisors, employees, and members and to encourage such persons to take the necessary action to aid the sponsor in meeting its obligations under this part.

(5) Engaging in programs such as outreach for the positive recruitment and preparation of potential applicants for apprenticeships; where appropriate and feasible, such programs shall provide for pretesting experience and training. If no such programs are in existence the sponsor shall seek to initiate these programs, or, when available, to obtain financial assistance from the Department. In initiating and conducting these programs, the sponsor may be required to work with other sponsors and appropriate community organizations. The sponsor shall also initiate programs to prepare women and encourage women to enter traditionally male programs.

(6) To encourage the establishment and utilization of programs of preapprenticeship, preparatory trade training, or others designed to afford related work experience or to prepare candidates for apprenticeship, a sponsor shall make appropriate provision in its affirmative action plan to assure that

those who complete such programs are afforded full and equal opportunity for admission into the apprenticeship program.

(7) Utilization of journeypersons to assist in the implementation of the sponsor's affirmative action program.

(8) Granting advance standing or credit on the basis of previously acquired experience, training, skills, or aptitude for all applicants equally.

(9) Admitting to apprenticeship, persons whose age exceeds the maximum age for admission to the program, where such action assists the sponsor in achieving its affirmative action obligations.

(10) Other appropriate action to ensure that the recruitment, selection, employment, and training of apprentices during apprenticeship shall be without discrimination because of race, color, religion, national origin, or sex (e.g., general publication of apprenticeship opportunities and advantages in advertisements, industry reports, articles, etc.; use of present minority and female apprentices and journeypersons as recruiters; career counseling; periodic auditing of affirmative action programs and activities; and development of reasonable procedures between the sponsor and employers of apprentices to ensure that employment opportunity is being granted, including reporting systems, on-site reviews, briefing sessions, etc.). The affirmative action program shall set forth the specific steps the sponsor intends to take, in the above areas, under this paragraph (c). Whenever special circumstances warrant, the Department may provide such financial or other assistance as it deems necessary to implement the above requirements.

(d) *Goals and timetables.* (1) A sponsor adopting a selection method under § 30.5(b) (1) or (2) which determines on the basis of the analysis described in paragraph (e) of this section that it has deficiencies in terms of underutilization of minorities and/or women (minority and nonminority) in the craft or crafts represented by the program shall include in its affirmative action plan percentage goals and timetables for the admission of minority and/or female (minority and nonminority) applicants into the eligibility pool.

(2) A sponsor adopting a selection method under § 30.5(b) (3) or (4) which determines on the basis of the analysis described in paragraph (e) of this section that it has deficiencies in terms of the underutilization of minorities and/or women in the craft or crafts represented by the program shall include in its affirmative action plan percentage goals and timetables for the selection of minority and female (minority and nonminority) applicants for the apprenticeship program.

(3) "Underutilization" as used in this paragraph refers to the situation where there are fewer minorities and/or women (minority and nonminority) in the particular craft or crafts represented by the program than would reasonably be expected in view of an analysis of the specific factors in paragraphs (e) (1) through (5) of this section. Where, on the basis of the analysis, the sponsor determines that it has no deficiencies, no goals and timetables need be established. However, where no goals and timetables are established, the affirmative action plan shall include a detailed explanation why no goals and timetables have been established.

(4) Where the sponsor fails to submit goals and timetables as part of its affirmative action plan or submits goals and timetables which are unacceptable, and the Department determines that the sponsor has deficiencies in terms of underutilization of minorities or women (minority and nonminority) within the meaning of this section, the Department shall establish goals and timetables applicable to the sponsor for the admission of minority and female (minority and nonminority) applicants into the eligibility pool or selection of apprentices, as appropriate. The sponsor shall make good faith efforts to attain these goals and timetables in accordance with the requirements of this section.

(e) *Analysis to determine if deficiencies exist.* The sponsor's determination as to whether goals and timetables shall be established, shall be based on an analysis of at least the following factors, which analysis shall be set forth in writing as part of the affirmative action plan.

(1) The size of the working age minority and female (minority and nonminority) population in the program sponsor's labor market area;

(2) The size of the minority and female (minority and nonminority) labor force in the program sponsor's labor market area;

(3) The percentage of minority and female (minority and nonminority) participation as apprentices in the particular craft as compared with the percentage of minorities and women (minority and nonminority) in the labor force in the program sponsor's labor market area;

(4) The percentage of minority and female (minority and nonminority) participation as journeypersons employed by the employer or employers participating in the program as compared with the percentage of minorities and women (minority and nonminority) in the sponsor's labor market area and the extent to which the sponsor should be expected to correct any deficiencies through the achievement of goals and timetables for the selection of apprentices; and

(5) The general availability of minorities and women (minority and nonminority) with present or potential capacity for apprenticeship in the program sponsor's labor market area.

(f) *Establishment and attainment of goals and timetables.* The goals and timetables shall be established on the basis of the sponsor's analyses of its underutilization of minorities and women and its entire affirmative action program. A single goal for minorities and a separate single goal for women is acceptable unless a particular group is employed in a substantially disparate manner in which case separate goals shall be established for such group. Such separate goals would be required, for example, if a specific minority group of women were underutilized even though the sponsor had achieved its standards for women generally. In establishing the goals, the sponsor should consider the results which could be reasonably expected from its good faith efforts to make its overall affirmative action program work. Compliance with these requirements shall be determined by whether the sponsor has met its goals within its timetables, or failing that, whether it has made good faith efforts to meet its goals and timetables. Its "good faith efforts" shall be judged by whether it is following its affirmative action program and attempting to make it work, including evaluation and changes in its program where necessary to obtain the maximum effectiveness toward the attainment of its goals. However, in order to deal fairly with program sponsors, and with women who are entitled to protection under the goals and timetables requirements, during the first 12 months after the effective date of these regulations, the program sponsor would generally be expected to set a goal for women for the entering year class at a rate which is not less than 50 percent of the proportion women are of the workforce in the program sponsor's labor market area and set a percentage goal for women in each class beyond the entering class which is not less than the participation rate of women currently in the preceding class. At the end of the first 12 months after the effective date of these regulations, sponsors are expected to make appropriate adjustments in goal levels. See 29 CFR 30.8(b).

(g) *Data and information.* The Secretary of Labor, or a person or agency designated by the Secretary, shall make available to program sponsors data and information on minority and female (minority and nonminority) labor force characteristics for each Standard Metropolitan Statistical Area and for other special areas as appropriate.

§ 30.5 Selection of apprentices.

(a) *Obligations of sponsors.* In addition to the development of a written affirmative action plan to ensure that minorities and women have an equal opportunity for selection as apprentices and otherwise ensure the prompt achievement of full and equal opportunity in apprenticeship, each sponsor shall further provide in its affirmative action program that the selection of apprentices shall be made under one of the methods specified in the following subparagraphs (1) through (4) of paragraph (b) of this section.

(b) *Selection methods.* The sponsor shall adopt one of the following methods for selecting apprentices:

(1) *Selection on basis of rank from pool of eligible applicants*—(i) *Selection.* A sponsor may select apprentices from a pool of eligible applicants created in accordance with the requirements of subdivision (iii) of this subparagraph on the basis of the rank order of scores of applicants on one or more qualification standards where there is a significant statistical relationship between rank order of scores and performance in the apprenticeship program. In demonstrating such relationship, the sponsor shall follow the procedures set forth in Guidelines on Employee Selection Procedures published at 41 CFR Part 60-3.

(ii) *Requirements.* The sponsor adopting this method of selecting apprentices shall meet the requirements of subdivisions (iii) through (vii) of this subparagraph.

(iii) *Creation of pool of eligibles.* A pool of eligibles shall be created from applicants who meet the qualifications of minimum legal working age; or from applicants who meet qualification standards in addition to minimum legal working age: *Provided,* That any additional qualification standards conform with the following requirements:

(A) *Qualification standards.* The qualification standards, and the procedures for determining such qualification standards, shall be stated in detail and shall provide criteria for the specific factors and attributes to be considered in evaluating applicants for admission to the pool. The score required under each qualification standard for admission to the pool shall also be specified. All qualification standards, and the score required on any standard for admission to the pool, shall be directly related to job performance, as shown by a significant statistical relationship between the score required for admission to the pool, and performance in the apprenticeship program. In demonstrating such relationship, the sponsor shall follow the procedures set forth in 41 CFR Part 60-3. Qualifications shall be considered as separately required so that the failure of an applicant to attain the specified score under a single qualification standard shall disqualify the applicant from admission to the pool.

(B) *Aptitude tests.* Any qualification standard for admission to the pool consisting of aptitude test scores shall be directly related to job performance, as shown by significant statistical relationships between the score on the aptitude tests required for admission to the pool, and performance in the apprenticeship program. In determining such relationship, the sponsor shall follow the procedures set forth in 41 CFR Part 60-3. The requirements of this subparagraph (B) shall also be applicable to aptitude tests utilized by a program sponsor which are administered by a state employment agency, or any other person, agency, or organization engaged in the selection or evaluation of personnel. A national test developed and administered by a national joint apprenticeship committee will not by approved by the Department unless such test meets the requirements of this subsection.

(C) *Educational attainments.* All educational attainments or achievements as qualifications for admission to the pool shall be directly related to job performance as shown by a significant statistical relationship between the score required for admission to the pool and performance in the apprenticeship program. In demonstrating such relationship, the sponsor shall meet the requirements of 41 CFR Part 60-3. School records or a passing grade on the general education development tests recognized by the State or local public instruction authority shall be evidence of educational achievement. Education requirements shall be applied uniformly to all applicants.

(iv) *Oral interviews.* Oral interviews shall not be used as a qualification standard for admission into an eligibility pool. However, once an applicant is placed in the eligibility pool, and prior to selection for apprenticeship from the pool, he or she may be required to submit to an oral interview. Oral interviews shall be limited to such objective questions as may be required to determine the fitness of applicants to enter the apprenticeship program, but shall not include questions relating to qualifications previously determined in gaining entrance to the eligibility pool. When an oral interview is used, each interviewer shall record the questions and the general nature of the applicant's answers, and shall prepare a summary of any conclusions. Each applicant rejected from the pool of eligibles on the basis of an oral interview shall be given a written statement of such rejection, the reasons therefor, and the appeal rights available to the applicant.

(v) *Notification of applicants.* All applicants who meet the requirements for admission shall be notified and placed in the eligibility pool. The program sponsor shall give each rejected applicant who is not selected for the pool or the program notice of his or her rejection, including the reasons for the rejection, the requirements for admission to the pool of eligibles, and the appeal rights available to the applicant.

(vi) *Goals and timetables.* The sponsor shall establish where required by § 30.4(d), percentage goals and timetables for the admission of minorities and women (minority and nonminority) into the pool of eligibles, in accordance with the provisions of § 30.4 (d), (e), and (f).

(vii) *Compliance.* A sponsor shall be deemed to be in compliance with its commitments under subdivision (vi) of this subparagraph if it meets its goals or timetables or if it makes a good faith effort to meet these goals and timetables. In the event of the failure of the sponsor to meet its goals and timetables, it shall be given an opportunity to demonstrate that it has made every "good faith effort" to meet its commitments (see § 30.4(f)). All the actions of the sponsor shall be reviewed and evaluated in determining whether such good faith efforts have been made.

(2) *Random selection from pool of eligible applicants*—(i) *Selection.* A sponsor may select apprentices from a pool of eligible applicants on a random basis. The method of random selection is subject to approval by the Department. Supervision of the random selection process shall be by an impartial person or persons selected by the sponsor, but not associated with the administration of the apprenticeship program. The time and place of the selection, and the number of apprentices to be selected, shall be announced. The place of the selection shall be open to all applicants and the public. The names of apprentices drawn by this method shall be posted immediately following the selection at the program sponsor's place of business.

(ii) *Requirements.* The sponsor adopting this method of selecting apprentices shall meet the requirements of subdivisions (iii) through (v) of subparagraph (1) of this paragraph relating to the creation of pool of eligibles, oral interviews, and notification of applicants.

(iii) *Goals and timetables.* The sponsor shall establish, where required by § 30.4(d), percentage goals and timetables for admission of minorities and women (minority and nonminority) into the pool of eligibles in accordance with the provisions of sections 30.4 (d), (e), and (f).

(iv) *Compliance.* Determinations as to the sponsor's compliance with its obligations under these regulations shall be in accordance with the provisions of subdivision (vii) of subparagraph (1) of this paragraph (b).

(3) *Selection from pool of current employees*—(i) *Selection.* A sponsor may select apprentices from an eligibility pool of the workers already employed by the program sponsor in a manner prescribed by a collective bargaining agreement where such exists, or by the sponsor's established promotion policy. The sponsor adopting this method of selecting apprentices shall establish goals and timetables for the selection of minority and female apprentices, unless the sponsor concludes, in accordance with the provisions of § 30.4 (d), (e), and (f) that it does not have deficiencies in terms of underutilization of minorities and/or women (minority and nonminority) in the apprenticeship of journeyperson crafts represented by the program.

(ii) *Compliance.* Determinations as to the sponsor's compliance with its obligations under these regulations shall be in accordance with provisions of paragraph (b)(1)(vii) of this section.

(4) *Alternative selection methods*—(i) *Selection.* A sponsor may select apprentices by means of any other method including its present selection method: *Provided,* That the sponsor meets the following requirements:

(A) *Selection method and goals and timetables.* Within 90 days of the effective date of this amendment, the sponsor shall complete development of the revised selection method it proposes to use along with the rest of its written affirmative action program including, where required by § 30.4(d), its percentage goals and timetables for the selection of minority and/or female (minority and nonminority) applicants for apprenticeship and its written analysis, upon which such goals and timetables, or lack thereof, are based. The establishment of goals and timetables shall be in accordance with the provisions of § 30.4 (d), (e), and (f). The sponsor may not implement any such selection method until the Department has approved the selection method as meeting the requirements of item (B) of this subdivision and has approved the remainder of its affirmative action program including its goals and timetables. If the Department fails to act upon the selection method and the affirmative action program within 30 days of its submission, the sponsor then may implement the selection method.

(B) *Qualification standards.* Apprentices shall be selected on the basis of objective and specific qualification standards. Examples of such standards are fair aptitude tests, school diplomas or equivalent, occupationally essential health requirements, fair interviews, school grades, and previous work experience. Where interviews are used, adequate records shall be kept including a brief summary of each interview and the conclusions on each of the specific factors, e.g., motivation, ambition, and willingness to accept direction which are part of the total judgement. In applying any such standards, the sponsor shall meet the requirements of 41 CFR Part 60-3.

(ii) *Compliance.* Determinations as to the sponsor's compliance with its obligations under these regulations shall be in accordance with the provisions of paragraph (b)(1)(vii) of this section. Where a sponsor, despite its good faith efforts, fails to meet its goals and timetables within a reasonable period of time, the sponsor may be required to make appropriate changes in its affirmative action program to the extent necessary to obtain maximum effectiveness toward the attainment of its goals. The sponsor may also be required to develop and adopt an alternative selection method, including a method prescribed by the Department, where it is determined that the failure of the sponsor to meet its goals is attributable in substantial part to the selection method. Where the sponsor's failure to meet its goals is attributable in substantial part to its use of a qualification standard which has adversely affected the opportunities of minorities and/or women (minority and nonminority) for apprenticeship, the sponsor may be required to demonstrate that such qualification standard is directly related to job performance, in accordance with the provisions of paragraph (b)(1)(iii)(A) of this section.

§ 30.6 Existing lists of eligibles and public notice.

A sponsor adopting a selection method under § 30.5(b) (1) or (2) and a sponsor adopting a selection method under § 30.5(b)(4) who determines that there are fewer minorities and/or women (minority and nonminority) on its existing lists of eligibles than would reasonably be expected in view of the analysis described in § 30.4(e) shall discard all existing eligibility lists upon adoption of the selection methods required by this part. New eligibility pools shall be established and lists of eligibility pools shall be posted at the sponsor's place of business. Sponsors shall establish a reasonable period of not less than 2 weeks for accepting applications for admission to an apprenticeship program. There shall be at least 30 days of public notice in advance of the earliest date for application for admission to the apprenticeship program (see § 30.4(c) on affirmative action with respect to dissemination of information). Applicants who have been placed in a pool of eligibles shall be retained on lists of eligibles subject to selection for a period of 2 years. Applicants may be removed from the list at an earlier date by their request or following their failure to respond to an apprentice job opportunity given by certified mail, return receipt requested. Applicants who have been accepted in the program shall be afforded a reasonable period of time in light of the customs and practices of the industry for reporting for work. All applicants shall be treated equally in determining such period of time. It shall be the responsibility of the applicant to keep the sponsor informed of his or her current mailing address. Upon request, a sponsor may restore to the list of eligibles applicants who have been removed from the list or who have failed to respond to an apprenticeship job opportunity.

§ 30.7 [Reserved]

§ 30.8 Records.

(a) *Obligations of sponsors.* Each sponsor shall keep adequate records including a summary of the qualifications of each applicant, the basis for evaluation and for selection or rejection of each applicant, the records pertaining to interviews of applicants, the original application for each applicant, information relative to the operation of the apprenticeship program, including but not limited to job assignment, promotion, demotion, layoff, or termination, rates of pay, or other forms of compensation or conditions of work, hours including hours of work and, separately, hours of training provided, and any other records pertinent to a determination of compliance with these regulations, as may be required by the Department. The records pertaining to individual applicants, selected or rejected, shall be maintained in such manner as to permit identification of minority and female (minority and nonminority) participants.

(b) *Affirmative action plans.* Each sponsor must retain a statement of its affirmative action plan required by § 30.4 for the prompt achievement of full and equal opportunity in apprenticeship, including all data and analyses made pursuant to the requirements of § 30.4. Sponsors shall review their affirmative action plans annually and update them where necessary, including the goals and timetables.

(c) *Qualification standards.* Each sponsor must maintain evidence that its qualification standards have been validated in accordance with the requirements set forth in § 30.5(b).

(d) *Records of State Apprenticeship Councils.* State Apprenticeship Councils shall keep adequate records, including registration requirements, individual program standards and registration records, program compliance reviews and investigations, and any other records pertinent to a determination of compliance with this part, as may be required by the Department, and shall report to the Department as may be required by the Department.

(e) *Maintenance of records.* The records required by this part and any other information relevant to compliance with these regulations shall be maintained for 5 years and made available upon request to the Department or other authorized representative.

§ 30.9 Compliance reviews.

(a) *Conduct of compliance reviews.* The Department will regularly conduct systematic reviews of apprenticeship programs in order to determine the extent to which sponsors are complying with these regulations and will also conduct compliance reviews when circumstances, including receipt of complaints not referred to a private review body pursuant to § 30.11(b)(i), so warrant, and take appropriate action regarding programs which are not in compliance with the requirements of this part. Compliance reviews will consist of comprehensive analyses and evaluations of each aspect of the apprenticeship program, including onsite investigations and audits.

(b) *Reregistration.* Sponsors seeking reregistration shall be subject to a compliance review as described in paragraph (a) of this section by the Department as part of the reregistration process.

(c) *New registrations.* Sponsors seeking new registration shall be subject to a compliance review as described in paragraph (a) of this section by the Department as part of the registration process.

(d) *Voluntary compliance.* Where the compliance review indicates that the sponsor is not operating in accordance with this part, the Department shall notify the sponsor in writing of the results of the review and make a reasonable effort to secure voluntary compliance on the part of the program sponsor within a reasonable time before undertaking sanctions under § 30.13. In the case of sponsors seeking new registration, the Department will provide appropriate recommendations to the sponsor to enable it to achieve compliance for registration purposes.

§ 30.10 Noncompliance with Federal and state equal opportunity requirements.

A pattern or practice of noncompliance by a sponsor (or where the sponsor is a joint apprenticeship committee, by one of the parties represented on such committee) with Federal or state laws or regulations requiring equal opportunity may be grounds for the imposition of sanctions in accordance with § 30.13 if such noncompliance is related to the equal employment opportunity of apprentices and/or graduates of such an apprenticeship program under this part. The sponsor shall take affirmative steps to assist and cooperate with employers and unions in fulfilling their equal employment opportunity obligations.

§ 30.11 Complaint procedure.

(a) *Filing.* (1) Any apprentice or applicant for apprenticeship who believes that he or she has been discriminated against on the basis of race, color, religion, national origin, or sex with regard to apprenticeship or that the equal opportunity standards with respect to his or her selection have not been followed in the operation of an apprenticeship program may, personally or through an authorized representative, file a complaint with the Department, or, at the apprentice's or applicant's election, with a private review body established pursuant to subparagraph (3) of this paragraph. The complaint shall be in writing and shall be signed by the complainant. It must include the name, address and telephone number of the person allegedly discriminated against, the program sponsor involved, and a brief description of the circumstances of the failure to apply the equal opportunity standards provided for in this part.

(2) The complaint must be filed not later than 180 days from the date of the alleged discrimination or specified failure to follow the equal opportunity standards; and, in the case of complaints filed directly with review bodies designated by program sponsors to review such complaints, any referral of such complaint by the complainant to the Department must occur within the time limitation stated above or 30 days from the final decision of such review body, whichever is later. The time may be extended by the Department for good cause shown.

(3) Sponsors are encouraged to establish fair, speedy, and effective procedures for a review body to consider complaints of failure to follow the equal opportunity standards. A private review body established by the program sponsor for this purpose should number three or more responsible persons from the community serving in this capacity without compensation. Members of the review body should not be directly associated with the administration of an apprenticeship program. Sponsors may join together in establishing a review body to serve the needs of programs within the community.

(b) *Processing of complaints.* (1)(i) When the sponsor has designated a review body for reviewing complaints, the Department, unless the complainant has indicated otherwise or unless the Department has determined that the review body will not effectively enforce the equal opportunity standards, shall upon receiving a complaint refer it to the review body.

(ii) The Department shall, within 30 days following the referral of a complaint to the review body, obtain reports from the complainant and the review body as to the disposition of the complaint. If the complaint has been satisfactorily adjusted and there is no other indication of failure to apply equal opportunity standards, the case shall be closed and the parties appropriately informed.

(iii) When a complaint has not been resolved by the review body within 90 days or where, despite satisfactory resolution of the particular complaint by the review body, there is evidence that equal opportunity practices of the apprenticeship program are not in accordance with this part, the Department may conduct such compliance review as found necessary, and will take all necessary steps to resolve the complaint.

(2) Where no review body exists, the Department may conduct such compliance review as found necessary in order to determine the facts of the complaint, and obtain such other information relating to compliance with these regulations as the circumstances warrant.

(3) Sponsors shall provide written notice of the above complaint procedure to all applicants for apprenticeship and all apprentices.

§ 30.12 Adjustments in schedule for compliance review or complaint processing.

If, in the judgment of the Department, a particular situation warrants and requires special processing and either expedited or extended determination, it shall take the steps necessary to permit such determination if it finds that no person or party affected by such determination will be prejudiced by such special processing.

§ 30.13 Sanctions.

(a) Where the Department, as a result of a compliance review or other reason, determines that there is reasonable cause to believe that an apprenticeship program is not operating in accordance with this part and voluntary corrective action has not been taken by the program sponsor, the Department shall institute proceedings to deregister the program or it shall refer the matter to the Equal Employment Opportunity Commission or to the Attorney General with recommendations for the institution of a court action under Title VII of the Civil Rights Act of 1964, as amended, or to the Attorney General for other court action as authorized by law.

(b) Deregistration proceedings shall be conducted in accordance with the following procedures:

(1) The Department shall notify the sponsor, in writing, that a determination of reasonable cause has been made under paragraph (a) of this section and that the apprenticeship program may be deregistered unless, within 15 days of the receipt of the notice, the sponsor requests a hearing. The notification shall specify the facts on which the determination is based.

(2) If within 15 days of the receipt of the notice provided for in subparagraph (1) of this paragraph the sponsor mails a request for a hearing, the Secretary shall convene a hearing in accordance with § 30.16.

(3) The Secretary shall make a final decision on the basis of the record, which shall consist of the compliance review file and other evidence presented and, if a hearing was conducted pursuant to § 30.16, the proposed findings and recommended decision of the hearing officer. The Secretary may allow the sponsor a reasonable time to achieve voluntary corrective action. If the Secretary's decision is that the apprenticeship program is not operating in accordance with this part, the apprenticeship program shall be deregistered. In each case in which deregistration is ordered, the Secretary shall make public notice of the order and shall notify the sponsor and the complainant, if any.

§ 30.14 Reinstatement of program registration.

Any apprenticeship program deregistered pursuant to this part may be reinstated upon presentation of adequate evidence to the Secretary that the apprenticeship program is operating in accordance with this part.

§ 30.15 State Apprenticeship Councils.

(a) *Adoption of consistent state plans.* (1) The Department shall encourage State Apprenticeship Councils to adopt and implement the requirements of this part.

(2) Within 60 days of the effective date of these regulations, each State Apprenticeship Council shall complete development of a revised equal opportunity plan which shall be consistent with this part. The revised State plan shall require all state apprenticeship programs registered with the State Apprenticeship Council to comply with the requirements of the revised

State plan within 90 days of the effective date of these regulations. No State Apprenticeship Council shall continue to be recognized by the Department if it has not adopted within 60 days of the effective date of these regulations a plan implementing the requirements of this part.

(3) The Department retains authority to conduct compliance reviews and complaint investigations to determine whether the state plan or any state apprenticeship program registered with a State Apprenticeship Council is being administered or operated in accordance with this part.

(4) It shall be the responsibility of the State Apprenticeship Council to take the necesssary action to bring a noncomplying program into compliance with the state plan. In the event the State Apprenticeship Council fails to fulfill this responsibility, the Secretary may withdraw the recognition for Federal purposes of any or all state apprenticeship programs, in accordance with the procedures of deregistration of programs registered by the Department, or refer the matter to the Equal Employment Opportunity Commission or to the Attorney General with a recommendation for the institution of a court action under Title VII of the Civil Rights Act of 1964, as amended, or to the Attorney General for other court actions as authorized by law.

(5) Each State Apprenticeship Council shall notify the Department of any state apprenticeship program deregistered by it.

(6) Any state apprenticeship program deregistered by a State Apprenticeship Council for noncompliance with requirements of this part may, within 15 days of the receipt of a notice of deregistration, appeal to the Department to set aside the determination of the State Apprenticeship Council. The Department shall make its determination on the basis of the record. The Department may grant the state program sponsor, the State Apprenticeship Council and the complainant(s), if any, the opportunity to present oral or written argument.

(b) *Withdrawal of recognition.* (1) Whenever the Department determines that reasonable cause exists to believe that State Apprenticeship Council has not adopted or implemented a plan in accordance with the equal opportunity requirements of this part, it shall give notice to such State Apprenticeship Council and to appropriate state sponsors of this determination, stating specifically wherein the state's plan fails to meet such requirements and that the Department proposes to withdraw recognition for Federal purposes, from the State Apprenticeship Council unless within 15 days of the receipt of the notice, the State Apprenticeship Council complies with the provisions of this part or mails a request for a hearing to the Secretary.

(2) If within 15 days of the receipt of the notice provided for in subparagraph (1) of this paragraph the State Apprenticeship Council neither complies with the provisions of this part, nor mails a request for a hearing, the Secretary shall notify the State Apprenticeship Council of the withdrawal of recognition.

(3) If within 15 days of the receipt of the notice provided for in subparagraph (1) of this paragraph the State Apprenticeship Council mails a request for a hearing, the Secretary shall proceed in accordance with § 30.16.

(4) If a hearing is conducted in accordance with § 30.16, the Secretary upon receipt of the proposed findings and recommended decision of the hearing officer shall make a final decision whether the State Apprenticeship Council has adopted or implemented a plan in accordance with the equal opportunity requirements of this part.

(5) If the Secretary determines to withdraw recognition, for Federal purposes, from the State Apprenticeship Council, the Secretary shall notify the State Apprenticeship Council of this determination. The Secretary shall also notify the State sponsors that within 30 days of the receipt of the notice the Department shall cease to recognize, for Federal purposes, each State apprenticeship program unless the State program sponsor requests registration with the Department. Such registration may be granted contingent upon finding that the State apprenticeship program is operating in

accordance with the requirements of this part.

(6) A State Apprenticeship Council whose recognition has been withdrawn pursuant to this part may have its recognition reinstated upon presentation of adequate evidence to the Secretary that it has adopted and implemented a plan carrying out the equal opportunity requirements of this part.

§ 30.16 Hearings.

(a) Within 10 days after receiving a request for a hearing, the Secretary shall designate a hearing officer. The hearing officer shall give reasonable notice of such hearing by certified mail, return receipt requested, to the appropriate sponsor (Federal or state registered), the State Apprenticeship Council, or both, as the case may be. Such notice shall include (1) a reasonable time and place of hearing, (2) a statement of the provisions of this part, pursuant to which the hearing is to be held, and (3) a concise statement of the matters pursuant to which the action forming the basis of the hearing is proposed to be taken.

(b) The hearing officer shall regulate the course of the hearing. Hearings shall be informally conducted. Every party shall have the right to counsel, and a fair opportunity to present his or her case including such cross-examination as may be appropriate in the circumstances. Hearing officers shall make their proposed findings and recommended decisions to the Secretary upon the basis of the record before them.

§ 30.17 Intimidatory or retaliatory acts.

Any intimidation, threat, coercion, or retaliation by or with the approval of any sponsor against any person for the purpose of interfering with any right or privilege secured by Title VII of the Civil Rights Act of 1964, as amended, Executive Order 11246, as amended, or because he or she has made a complaint, testified, assisted, or participated in any manner in any investigation proceeding, or hearing under this part shall be considered noncompliance with the equal opportunity standards of this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing or judicial proceeding arising therefrom.

§ 30.18 Nondiscrimination.

The commitments contained in the sponsor's affirmative action program are not intended and shall not be used to discriminate against any qualified applicant or apprentice on the basis of race, color, religion, national origin, or sex.

§ 30.19 Exemptions.

Request for exemption from these regulations, or any part thereof, shall be made in writing to the Secretary and shall contain a statement of reasons supporting the request. Exemptions may be granted for good cause. State Apprenticeship Councils shall notify the Department of any such exemptions granted affecting a substantial number of employers and the reasons therefor.

PART 31—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF LABOR—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

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AUTHORITY: Sec. 602, 78 Stat. 252; 42 U.S.C. 501, 29 U.S.C. 49k, 5 U.S.C. 301.

SOURCE: 29 FR 16284, Dec. 4, 1964, unless otherwise noted.

§ 31.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Labor.

§ 31.2 Definitions.

For purposes of this part –

(a) The term "Act" means the Civil Rights Act of 1964 (78 Stat. 241).

(b) The term "applicant" means one who submits an application, request, or plan required to be approved by the Secretary, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such application, request, or plan.

(c) The term "Department" means the Department of Labor and includes each of its operating agencies and other organizational units.

(d) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(e) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(f) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(g) The term "program" includes any program, project or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(h) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or any other entity, or any individual in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(i) The term "Secretary" means the Secretary of Labor or any person specifically designated by him to perform any function provided for under this part, except that only the Secretary personally or a hearing examiner shall conduct hearings under § 31.10.

(j) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

§ 31.3 General standards.

(a) *General.* No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance from the Department of Labor.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this regulation applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program, or

(vii) Deny an individual an opportunity to participate in a program as an employee where a primary objective of the Federal financial assistance is to provide employment.

(viii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of race, color or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the ground of race, color or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) As used in this section the services, financial aid, or other benefit provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a).

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program shall take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color or national origin.

(7) The following will illustrate the application of the provisions of the foregoing paragraph to programs for which Federal financial assistance is furnished by this Department:

(i) In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 31.5(d) to provide information as to the availability of the program or activity, and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subjected to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served.

(ii) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In some circumstances an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups not then being adequately served. For example, where an employment service office is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this regulation applies is to provide employment, a recipient may not (directly or through contractual or other arrangements) subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program including recruitment, examination, appointment, training, promotion, retention or any other personnel action.

(2) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the ground of race, color or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provision of the foregoing paragraph shall apply to the employment practices of the recipient to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries. Accordingly, the employment practices of recipients under programs enumerated in §§ 31.3(d)(2) and 31.3(d)(3) are subject to the provisions of this paragraph (c) to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, the beneficiaries of the Federal financial assistance. Any action taken by the Department pursuant to this provision with respect to a State or local agency subject to the Standards for a Merit System of Personnel Administration, 45 CFR Part 70, shall be consistent with those standards and shall be coordinated with the United States Civil Service Commission.

(3) The requirements applicable to construction employment under any program for which Federal financial assistance is furnished by this Department shall be those specified in or pursuant to part III of Executive Order 11246 or any Executive order which supersedes it.

(d) In order that all parties may have a clear understanding of the applicability of the regulations in this part to their activities, there are listed in this section programs and activities together with illustrations by way of example only, of types of activity covered by the regulations in this part. These illustrations and examples, however, are not intended to be all inclusive. The fact that a particular program is not listed does not, of course, indicate that it is not covered by the regulations in this part. Moreover, the examples set forth with respect to any particular listed program are not limited to that program alone and the prohibited actions described may also be prohibited in other programs or activities whether or not listed below.

(1) *Employment service programs.* (i) The registration, counseling, testing, recruitment, selection and referral of individuals for job openings or training opportunities and all other activities performed by or through employment service offices financed in whole or in part from Federal funds, including the establishment and maintenance of physical facilities, shall be conducted without regard to race, color, or national origin.

(ii) No selection or referral of any individual for employment or training shall be made on the basis of any job order or request containing discriminatory specifications with regard to race, color, or national origin.

(2) *Manpower Development and Training Act, work-incentive under Social Security Act, Area Redevelopment Act, work-training under Economic Opportunity Act and other Government-sponsored training.* (i) The registration, counseling, testing, guidance, selection, referral or training of any individual including employment as an enrollee under title I-B of the Economic Opportunity Act shall be furnished without discrimination because of race, color, or national origin.

(ii) The recruitment, examination, appointment, training, promotion, retention, or any other personnel action with respect to any trainee or enrollee under the Manpower Development and Training Act, Area Redevelopment Act, or the Economic Opportunity Act while the individual is receiving training or employment shall be without regard to race, color or national origin.

(3) *State and Federal Unemployment Insurance Programs; allowances under Trade Readjustment Assistance Programs, Manpower Development and Training Act, and Area Redevelopment Act.* (i) The filing for, adjudication and payment of benefits, establishment and maintenance of physical facilities and other application of the laws shall be without regard to race, color or national origin.

[29 FR 16284, Dec. 4, 1964, as amended at 38 FR 17957, July 5, 1973]

§ 31.4 [Reserved]

§ 31.5 Compliance information.

(a) *Cooperation and assistance.* The Secretary shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the Secretary timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the Secretary may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In general, recipients should have available for the department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the Secretary during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Secretary finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

[29 FR 16284, Dec. 4, 1964. Redesignated and amended at 38 FR 17956, July 5, 1973]

§ 31.6 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, and every contract, subcontact, agreement or arrangement to carry out such program except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility, and every contract, subcontract, agreement or arrangement to provide such a facility shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contract, subcontract, agreement or arrangement contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every program of Federal financial assistance shall require the submission of such an assurance. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended to the program. In the case where the assistance is sought for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith. The Secretary shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in this program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case where Federal assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or interest therein from the Federal Government is involved, but property is acquired under a program of Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the Secretary, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on such property for the purpose for which the property was transferred, the Secretary may agree, upon request of the transferee and if necessary to accomplish such fi-

nancing and upon such conditions as he deems appropriate, to subordinate such rights of reversion to the sum of such mortgage or other encumbrance.

(b) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing federal financial assistance to which this part applies shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part.

[38 FR 17957, July 5, 1973]

§ 31.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The Secretary shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Secretary a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the Secretary.

(c) *Investigations.* The Secretary will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) indicates a failure to comply with this part, the Secretary will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 31.8.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) the Secretary will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainant shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

[29 FR 16284, Dec. 4, 1964. Redesignated and amended at 38 FR 17958, July 5, 1973]

§ 31.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until (1) the Secretary has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Secretary, and (4) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(c) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the Secretary has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Secretary, (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

[29 FR 16284, Dec. 4, 1964. Redesignated at 38 FR 17958, July 5, 1973]

§ 31.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 31.8(b), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Secretary that the matter be scheduled for hearing, or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this section or to appear at a hearing under this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 31.8(b) of this part and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the Secretary unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the Secretary or before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient, and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings or rules of procedure not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 31.10.

[29 FR 16284, Dec. 4, 1964. Redesignated and amended at 38 FR 17958, July 5, 1973]

§ 31.10 Decisions and notices.

(a) *Decision by a hearing examiner.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Secretary for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient and the complainant. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the Secretary his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Secretary may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the Secretary shall review the initial decision and issue his own decision thereon including the reasons therefor. The decision of the Secretary shall be mailed promptly to the applicant or recipient and the complainant, if any. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the Secretary.

(b) *Decisions on record or review by the Secretary.* Whenever a record is certified to the Secretary for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a), or whenever the Secretary conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the Secretary shall be given in writing to the applicant or recipient and the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 31.9(a) a decision shall be made by the Secretary on the record and a copy of such decision shall be given in writing to the applicant or recipient and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or the Secretary shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.

(f) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (c) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (c) of this section may at any time request the Secretary to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (f)(1) of this section. If the Secretary determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the Secretary denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes the Secretary to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the Secretary. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (f)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

[29 FR 16284, Dec. 4, 1964. Redesignated and amended at 38 FR 17958, July 5, 1973]

§ 31.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

[29 FR 16284, Dec. 4, 1964. Redesignated at 38 FR 17958, July 5, 1973]

§ 31.12 Effect on other regulations; supervision and coordination.

(a) *Effect on other regulations.* All regulations, orders or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligations assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925, 11114 and 11246 and regulations issued thereunder, (2) the

"Standards for a Merit System of Personnel Administration," issued jointly by the Secretaries of Defense, of Health, Education and Welfare, and of Labor, 23 FR 734, or (3) any other regulation or instruction insofar as it prohibits discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibits discrimination on any other ground.

(b) *Supervision and coordination.* (1) The Secretary may from time to time assign to officials of other departments or agencies of the government (with the consent of such department or agency) responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in § 31.11), including the achievement of effective coordination and maximum uniformity within the Department and within the executive branch of the Government in the application of title VI and this part to similar programs and in similar situations.

(2) Any action taken, determination made, or requirement imposed by an official of another Department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the Secretary.

[38 FR 17958, July 5, 1973]

PART 32—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

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APPENDIX A

AUTHORITY: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706); sec. 119 and 122 of the Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978, Pub. L. 95-602, 92 Stat. 2955; Executive Order 11914, 41 FR 17871.

SOURCE: 45 FR 66709, Oct. 7, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 32.1 Purpose.

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap in any program or activity receiving or benefiting from Federal financial assistance. The purpose of this part is to implement section 504 with respect to programs and activities receiving or benefiting from Federal financial assistance from the Department of Labor.

§ 32.2 Application.

(a) This part applies to each recipient of Federal financial assistance from the Department of Labor, and every program or activity that receives or benefits from such assistance, but is limited to the particular program for which Federal financial assistance is provided.

(b) A government contractor covered by the provisions of section 503 of the Act shall be deemed in compliance with the employment provisions of these regulations if it is in compliance with 41 CFR Part 60-741 (as amended after publication of these regulations) with respect to Federal financial assistance from the Department of Labor.

§ 32.3 Definitions.

As used in this part, the term:

"The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, and by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95-602.

"Assistant Secretary" means the Assistant Secretary for Employment and Training Administration or his or her designee.

"Applicant for assistance" means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

"Department" means the Department of Labor.

"Facility" means all or any portion of the buildings, structures, equipment, roads, walks, parking lots or other real or personal property or interest in such property which are utilized in the execution of the program for which Federal financial assistance is received.

"Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guarantee), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(a) Funds;

(b) Services of Federal personnel; or

(c) Real and personal property or any interest in or use of such property, including;

(1) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

"Government" means the Government of the United States of America.

"Handicap" means any condition or characteristic that renders a person a handicapped individual as defined in this section.

"Handicapped individual"

(a) "Handicapped individual" means any person who

(1) Has a physical or mental impairment which substantially limits one or more major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

(b) As used in the proceeding paragraph of this section, the phrase:

(1) "Physical or mental impairment" means

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine;

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(iii) The term "physical or mental impairment" includes but is not limited to such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular distrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Substantially limits" means the degree that the impairment affects an individual becoming a beneficiary of a program or activity receiving Federal financial assistance or affects an indi-

vidual's employability. A handicapped individual who is likely to experience difficulty in securing or retaining benefits or in securing, or retaining, or advancing in employment would be considered substantially limited.

(3) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, and receiving education or vocational training.

(4) "Has a record of such an impairment" means that the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more life activity.

(5) "Is regarded as having such an impairment" means that the individual

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (b)(1) of this section but is treated by a recipient as having such an impairment.

"Qualified handicapped individual" means: (a) with respect to employment, an individual with a handicap who is capable of performing the essential functions of the job or jobs for which he or she is being considered with reasonable accommodation to his or her handicap;

(b) With respect to services, a handicapped individual who meets eligibility requirements relevant to the receipt of services provided in the program;

(c) With respect to employment and to employment related training programs, a handicapped individual who meets both the eligibility requirements for participation in the program and valid job or training qualifications with reasonable accommodation.

"Reasonable accommodation" means the changes and modifications which can be made in the structure of a job or employment and training program, or in the manner in which a job is performed or an employment and training program is conducted, unless it would impose an undue hardship on the operation of the recipient's program. Reasonable accommodation may include:

(a) Making the facilities used by the employees or participants in the area where the program is conducted, including common areas used by all employees or participants such as hallways, restrooms, cafeterias and lounges, readily accessible to and usable by handicapped persons, and

(b) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

"Recipient" means any state or its political subdivisions, any instrumentality of a State or its political subdivisions, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

"Secretary" means the Secretary of Labor, U.S. Department of Labor.

"Section 504" means section 504 of the Act.

"Small recipient" means a recipient who serves fewer than 15 beneficiaries, and employs fewer than 15 employees at all times during a grant year.

"United States" means the several states, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa and the Trust Territory of the Pacific Islands.

§ 32.4 Discrimination prohibited.

(a) *General.* No qualified handicapped individual shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, service or training, may not, directly or through contractual, licensing, or other arrangments, on the basis of handicap:

(i) Deny a qualified handicapped individual the opportunity to participate in or benefit from the aid, benefit, service or training;

(ii) Afford a qualified handicapped individual an opportunity to participate in or benefit from the aid, benefit, service or training that is not equal to that afforded others;

(iii) Provide a qualified handicapped individual with any aid, benefit, service or training that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped individuals or to any class of handicapped individuals unless such action is necessary to provide qualified handicapped individuals with aid, benefits, services or training that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped individual by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, service or training to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped individual the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped individual in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service or training.

(2) For purposes of this part, aid, benefits, services and training, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped individuals, but must afford handicapped individuals equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) A recipient may not deny a qualified handicapped individual the opportunity to participate in its regular programs or activities, despite the existence of separate or different programs or activities for the handicapped which are established in accordance with this part.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified handicapped individuals to discrimination on the basis of handicap;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped individuals; or

(iii) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections.

(i) That have the effect of excluding handicapped individuals from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped individuals.

(6) As used in this section, the aid, benefit, service or training provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, service or training provided in or through a facility that has been constructed, expanded, altered, leased, rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(7)(i) In providing services under programs of Federal financial assistance, except for employment-related training, a recipient to which this subpart applies, except small recipients, shall ensure that no handicapped participant is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the program or activity operated by the recipient because of the absence of auxiliary aids for participants with impaired sensory, manual or speaking skills. In programs of employment and employment-related training, this paragraph shall apply only to the intake, assessment and referral services. A recipient shall operate each program or activity to which this subpart applies so that, when viewed in its entirety, auxiliary aids are readily available.

(ii) Auxiliary aids may include brailled and taped written materials, interpreters or other effective methods of making orally delivered information available to persons with hearing impairments, readers for persons with visual impairments, equipment adapted for use by persons with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

(c) *Programs limited by Federal law.* The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute on Executive Order to handicapped individuals or the exclusion of a specific class of handicapped individuals from a program limited by Federal statute or Executive Order to a different class of handicapped individuals is not prohibited by this part.

(d) *Integrated setting.* Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped individuals.

(e) *Communications with individuals with impaired vision and hearing.* Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

§ 32.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended or the federally-funded program is operated, whichever is longer.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no Federal transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (c)(1) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security to finance construction of new, or im-

provement of existing, facilities on the property for the purposes for which the property was transferred, the Assistant Secretary may agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective. Such an agreement by the Assistant Secretary may be entered into only upon the request of the transferee (recipient) if it is necessary to accomplish such financing and upon such terms and conditions as the Assistant Secretary deems appropriate.

(d) *Interagency agreements.* Where funds are granted by the Department to another Federal agency to carry out a program under a law administered by the Department, and where the grant obligates the recipient agency to comply with the rules and regulations of the Department applicable to that grant the provisions of this part shall apply to programs and activities operated with such funds.

§ 32.6 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 of this part, the recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action:

(i) With respect to handicapped individuals who would have been participants in the program had the discrimination not occurred; and

(ii) With respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when the discrimination occurred; and

(iii) With respect to employees and applicants for employment.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped individuals.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons who are selected by the recipient, including handicapped individuals or organizations representing handicapped individuals, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons who are selected by the recipient, including handicapped individuals or organizations representing handicapped individuals, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons who are selected by the recipient, including handicapped individuals or organizations representing handicapped individuals, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient, other than a small recipient, shall for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request:

(i) A list of the interested persons consulted;

(ii) A description of areas examined and any problems identified; and

(iii) A description of any modifications made and of any remedial steps taken.

§ 32.7 Designation of responsible employee.

A recipient, other than a small recipient shall designate at least one person to coordinate its efforts to comply with this part.

§ 32.8 Notice.

(a) A recipient, other than a small recipient, shall take appropriate initial and continuing steps to notify participants, beneficiaries, referral sources, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations which have collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of handicap in violation of section 504 and of this part. The notification shall state, where appropriate, that the recipient does not discriminate in the admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 32.7. A recipient shall make the initial notifications required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipient's publications, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§ 32.9 Administrative requirements for small recipients.

The Assistant Secretary may require any recipient that provides services to fewer than 15 beneficiaries or with fewer than 15 employees, or any class of such recipients, to comply with §§ 32.7 and 32.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

§ 32.10 Effect of State or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped individuals to receive services, participate in programs or practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped individuals than for nonhandicapped persons.

Subpart B—Employment Practices and Employment Related Training Program Participation

§ 32.12 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped individual shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies. This subpart is applicable to employees and applicants for employment with all recipients and to participants in employment and training programs financed in whole or in part by Federal financial assistance.

(2) A recipient shall make all decisions concerning employment or training under any program or activity to which this subpart applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees or participants in any way that adversely affects their opportunities or status because of handicap.

(3) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants, employees or participants to discrimination

prohibited by this subpart. The relationships referred to in this subparagraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment advertising, and the processing of applicants for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virture of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer-sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) *Collective bargaining agreements.* Whenever a recipient's obligation to comply with this subpart and to correct discriminatory practices impacts on and/or necessitates changes in a term of a collective bargaining agreement(s) to which the recipient is a party, the recipient shall attempt to achieve compliance consistent with the provisions of § 32.17(a). However a recipient's obligation to comply with this subpart is not relieved by a term of any such collective bargaining agreement(s).

(d) *Compensation.* In offering employment or promotions to handicapped individuals, the recipient shall not reduce the amount of compensation offered because of any disability income, pension or other benefit the applicant or employee receives from other source.

§ 32.13 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant, employee or participant unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include;

(1) The overall size of the recipient's program with respect to number of employees, number of participants, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce, and duration and type of training program; and

(3) The nature and cost of the accommodation needed.

(c) A recipient may not deny any employment or training opportunity to a qualified handicapped employee, applicant or participant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee, applicant or participant.

(d) Nothing in this paragraph shall relieve a recipient of its obligation to make its program accessible as required in Subpart C of this part, or to provide auxiliary aids, as required by § 32.4(b)(7).

§ 32.14 Job qualifications.

(a) The recipient shall provide for, and shall adhere to, a schedule for the review of the appropriateness of all job qualifications to ensure that to the extent job qualifications tend to exclude handicapped individuals because of their handicap, they are related to the performance of the job and are consistent with business necessity and safe performance.

(b) Whenever a recipient applies job qualifications in the selection of applicants, employees or participants for employment or training or other change in employment status such as promotion, demotion or training, which would tend to exclude handicapped individuals because of their handicap, the qualifications shall be related to the specific job or jobs for which the individual is being considered and shall be consistent with business necessity and safe performance. The recipient shall have the burden to demonstrate that it has complied with the requirements of this paragraph.

§ 32.15 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct preemployment medical examinations or make preemployment inquiry of an applicant for employment or training as to whether the applicant is a handicapped person or as to the nature or the severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination, when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited paticipation in its federally-assisted program or activity, or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment or training to indicate whether and to what extent they are handicapped if:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally, if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts.

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant, employee or participant to any adverse treatment, and that it will be used only in accordance with this part.

(c) An employer who routinely requires medical examinations as part of the employment selection process must demonstrate that each of the requirements of this subsection are met:

(1) The medical examination shall be performed by a physician qualified to make functional assessments of individuals in a form which will express residual capacity for work or training. Such an assessment does not require clinical determinations of disease or disability, but shall provide selecting or referring officials sufficient information regarding any functional limitations relevant to proper job placement or referral to appropriate training programs. Factors which may be assessed may include, for example, use of limbs and extremities, mobility and posture, endurance and energy expenditure, ability to withstand various working conditions and environments, use of senses and mental capacity;

(2) The results of the medical examination shall be specific and objective so as to be susceptible to review by independent medical evaluators and shall be transmitted to the applicant or employee at the same time as the employing official;

(3) The results of the medical examination shall not be used to screen out qualified applicants and employees but to determine proper placement and reasonable accommodation. The employing official using physical or mental information obtained pursuant to this section should be familiar with physical or mental activities involved in performing the job, and the working conditions and environment in which it is carried out. If the applicant is being considered for a variety of jobs having different requirements or skills, the employing official should make a functional assessment of the physical or mental demands of the jobs in order to match the applicant with the most suitable vacancy;

(4) All of potential employees for the jobs are subjected to the medical examination;

(5) The procedures for using medical examinations or the medical informa-

tion shall be constructed in such a manner that:

(i) A conditional job offer was made or the individual was conditionally placed in a job pool or conditionally placed on an eligibility list prior to the medical examination being performed; or

(ii) The results of the medical examination were considered by the employing official only after a conditional decision to make a job offer or the individual had been placed conditionally in a job pool or conditionally placed on an eligibility list; that is the medical results were the last factor evaluated by the employing officials before a final decision to make an offer of employment was made.

(6) Unless a conditional job offer is made prior to the medical examination, all potential employees for the job shall be informed at the time of the medical examination that:

(i) The results of the medical examination are the last factor evaluated by the employing official before a final decision to make an offer of employment is made, and

(ii) The medical examination results shall be transmitted to the employing official and the applicant only after a conditional decision to make a job offer has been made.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Employing officials may obtain the information after making a conditional decision to make a job offer to the applicant or the applicant was placed conditionally in a job pool or placed conditionally on an eligibility list.

(2) Supervisors and managers may be informed regarding restricions on the work or duties of qualified handicapped persons and regarding necessary accommodations;

(3) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(4) Government officials investigating compliance with the Act shall be provided information upon request.

§ 32.16 Listing of employment openings.

Recipients should request State employment security agencies to refer qualified handicapped individuals for consideration for employment.

§ 32.17 Labor unions and recruiting and training agencies.

(a) The performance of a recipient's obligations under the nondiscrimination provisions of these regulations may necessitate a revision in a collective bargaining agreement(s). The policy of the Department of Labor is to use its best efforts, directly or through the recipients, subgrantees, local officials, vocational rehabilitation facilities, and other available instrumentalities, to cause any labor union, recruiting and training agency or other representative or workers who are or may be engaged in work under programs of Federal financial assistance to cooperate with, and to comply in the implementation of Section 504.

(b) To effectuate the purposes of paragraph (a) of this section, the Assistant Secretary may hold hearings, public or private, with respect to the practices and policies of any such labor union or recruiting and training agency.

(c) Whenever compliance with section 504 necessitates a revision of a collective bargaining agreement or otherwise significantly affects a substantial number of employees represented by the union, the collective bargaining representatives shall be given an opportunity to present their views to the Assistant Secretary.

(d) The Assistant Secretary may notify any Federal, State, or local agency of his/her conclusions and recommendations with respect to any such labor organization or recruiting and training agency which in his/her judgment has failed to cooperate with the Department of Labor, recipients, subgrantees or applicants in carrying out the purposes of section 504. The Assistant Secretary also may notify other appropriate Federal agencies when there is reason to believe that the practices of any such labor organization or agency violates other provisions of Federal law.

Subpart C—Program Accessibility

§ 32.26 Discrimination prohibited.

No qualified handicapped individual shall, because a recipient's facilities are inaccessible to or unusable by handicapped individuals, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this Part applies.

§ 32.27 Access to programs.

(a) *Purpose.* A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to qualified handicapped individuals. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by qualified handicapped individuals. However, if a particular program is available in only one location, that site must be made accessible or the program must be made available at an alternative accessible site or sites. Program accessibility requires nonpersonal aids to make the program accessible to mobility impaired persons. Reasonable accommodations, as defined in § 32.3, are required for particular handicapped individuals in response to the specific limitations of their handicaps.

(b) *Scope and application.* (1) For the purpose of this subpart, prime sponsors under the Comprehensive Employment and Training Act and any other individual or organization which receives a grant directly from the Department to establish or operate any program or activity shall assure that the program or activity, including Public Service Employment, Work Experience, Classroom Training and On-the-Job-Training, when viewed in its entirety, is readily accessible to qualified handicapped individuals.

(2) *Job Corps.* All agencies, grantees, or contractors which screen or recruit applicants for the Job Corps shall comply with the nondiscrimination provisions of this Part. Each regional office of the Department of Labor's Employment and Training Administration which makes the decision on the assignment of a Job Corps applicant to a particular center may, where it finds, after consultation with the qualified handicapped person seeking Job Corps services, that there is no method of complying with § 32.27(a) at a particular Job Corps Center, other than by making a significant alteration in its existing facilities or in its training programs, assign that individual to another Job Corps Center which is accessible in accordance with this section and which is offering comparable training. The Job Corps, and each regional office of the Employment and Training Administration, shall assure that the Job Corps Program, when viewed in its entirety, is readily accessible to qualified handicapped individuals and that all future construction, including improvements to existing Centers, be made accessible to the handicapped.

(3) If a small recipient finds, after consultation with a qualified handicapped person seeking its services, that there is no method of complying with § 32.27(a) other than making a significant alteration in its existing facilities or facility the recipient may, as an alternative, refer the qualified handicapped person to other providers of those services that are accessible.

(c) *Methods.* A recipient may comply with the requirement of § 32.27(a) through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of § 32.28, or any other method that results in making its program or activity accessible to handicapped individuals. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with § 32.27(a). In choosing among available methods for meeting the requirement of § 32.27(a), a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(d) *Time period.* A recipient shall comply with the requirements of § 32.27(a) within 60 days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any even as expeditiously as possible.

(e) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of § 32.27(a), a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including qualified handicapped individuals.

A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to qualified handicapped individuals;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by qualified handicapped individuals.

§ 32.28 Architectural standards.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by qualified handicapped individuals, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by qualified handicapped individuals.

(c) *Standards for architectural accessibility.* Design, construction, or alteration of facilities under this subpart shall meet the most current standards for physical accessibility prescribed by the General Services Administration under the Architectural Barriers Act at 41 CFR § 101-19.6. Alternative standards may be adopted when it is clearly evident that equivalent or greater access to the facility or part of the facility is thereby provided.

Subpart D—Procedures

§ 32.44 Compliance information.

(a) *Cooperation and assistance.* The Assistant Secretary shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the Assistant Secretary timely, complete and accurate compliance reports at such times, and in such form and containing such information as the Assistant Secretary may determine to be necessary to enable him to ascertain whether the recipient had complied or is complying with this part. For example, recipients should have available for the Department data showing the extent to which known handicapped individuals are beneficiaries and participants in federally assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the Assistant Secretary during normal business hours to such of its books, records, accounts, and other sources of information and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the Department from access to or copying of records or information, or from evaluating or seeking to enforce compliance with this part.

(d) *Posters and information.* The recipient will post in prominent locations (bulletin boards, time clock areas, etc.) posters designed and furnished by DOL outlining and summarizing the nondiscrimination requirements of section 504. The recipient also will make readily available information on Section 504 requirements with respect to compliance procedures, the rights of beneficiaries and employees through handbooks, pamphlets and other materials furnished by DOL.

§ 32.45 Investigations.

(a) *Periodic compliance reviews.* The Assistant Secretary shall from time-to-time review the practices of recipients to determine whether they are complying with this part.

(b) *Adoption of grievance procedures.* A recipient shall adopt an internal review procedure incorporating appropriate due process standards which provides for the prompt and equitable resolution of complaints alleging any action prohibited by this part. The complainant or his or her representative shall file the complaint with the recipient for processing under those procedures. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the Assistant Secretary for good cause shown. The recipient shall maintain records on all complaints filed alleging violation of the Act and shall make such records available to the Assistant Secretary upon request. The complaint and all actions take thereunder shall be kept confidential by the recipient. If the complaint has not been resolved under those procedures satisfactorily to the complainant within 60 days of the filing or referral, the complainant or his or her representative may file a complaint with the Assistant Secretary within 30 days of the recipient level decision or 90 days from the date of filing the complaint, whichever is earlier. Upon such filing, the Assistant Secretary will proceed as provided in this section. Exhaustion of recipient level procedures shall be required except where:

(1) The recipient has not acted within the timeframe specified in this section; or

(2) The recipient's procedures are not in compliance with this section; or

(3) An emergency situation is determined to exist by the Assistant Secretary.

(c) *Complaints.* Where recipient level procedures have been exhausted, any person who believes he or she or any specific class of individuals has been subjected to discrimination prohibited by this part may (or through an authorized representative) file a written complaint with the Assistant Secretary.

(d) *Contents of complaints.* Complaints must be signed by the complainant or his or her authorized representative and must contain the following information:

(1) Name and address (including telephone or TTY number) of the complainant;

(2) Name and address of the recipient or sub-grantee who committed the alleged violation;

(3) A description of the act or acts considered to be a violation;

(4) A statement that the individual is handicapped or has a history of a handicap or other documentation of

impairment or was regard by the recipient as having an impairment; and

(5) Other pertinent information available which will assist in the investigation and resolution of the complaint.

(e) *Incomplete information.* Where a complaint contains incomplete information, the Assistant Secretary shall seek the needed information or any other information which indicates a possible failure to comply with this part from the complainant and shall be responsible for developing a complete record. If such information is not provided within 60 days, the complaint may be closed upon notice to the parties.

(f) *Resolution of matters.* Where an investigation indicates that the recipient has not complied with the requirements of the Act or this part, efforts shall be made to secure compliance through conciliation and persuasion within a reasonable time. Before the recipient or subgrantee can be found to be in compliance, it must make a specific commitment, in writing, to take corrective action to meet the requirements of the Act and this part. The commitment must indicate the precise action to be taken and dates for completion. The time period allowed should be no longer than the minimum period necessary to effect such changes. Upon approval of such commitment by the Assistant Secretary, the recipient may be considered in compliance on condition that the commitments are kept. Where the investigation indicates a violation of the Act or regulations in this part (and the matter has not been resolved by informal means), the Assistant Secretary shall afford the recipient an opportunity for a hearing in accordance with § 32.47.

(g) *Intimidatory or retaliatory acts prohibited.* The sanctions and penalties contained in this regulation may be exercised by the Assistant Secretary against any recipient or subgrantee who fails to take all necessary steps to ensure that no person intimidates, threatens, coerces or discriminates against any individual for the purpose of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of the Act.

§ 32.46 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this regulation and if the noncompliance or threatened noncompliance cannot be corrected by informal means, the Department may suspend, terminate or refuse to grant or to continue Federal financial assistance or take any other means authorized by law. Such other means may include, but are not limited to:

(1) A referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States or any assurance; and

(2) Any applicable proceeding under state or local law.

(b) *Noncompliance with the requirements of this part.* If a recipient fails or refuses to comply with a requirement imposed by or pursuant to this part, the Department may institute an administrative enforcement proceeding to compel compliance with the requirement, to seek appropriate relief, and or to terminate Federal financial assistance in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph if grants have not yet been approved or funds not yet committed to the recipient. However, the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until:

(1) The Assistant Secretary has advised the applicant or recipient of its

failure to comply and compliance has not been secured by voluntary means; and

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until:

(1) The Assistant Secretary has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person.

§ 32.47 Hearing practice and procedure.

(a) All hearings conducted under section 504 of the Rehabilitation Act of 1973, as amended, and the regulations in this part shall be governed by the Department of Labor's rules of practice for administrative proceedings to enforce Title VI of the Civil Rights Act of 1964 contained in 29 CFR Part 31.

(b) For the purposes of hearings pursuant to this part 32, references in 29 CFR Part 31 to Title VI of the Civil Rights Act of 1964 shall mean section 504 of the Rehabilitation Act of 1973, as amended.

(c) The Assistant Secretary from time-to-time may assign to officials of other departments or agencies of the Government or of the Department of Labor (with the consent of such department or agency) responsibilities in connection with the effectuation of the purposes of section 504 of the Act and this part (other than responsibility for final decisions as provided in § 32.46), including the achievement of effective coordination and maximum uniformity within the Department and within the executive branch of the Government in the application of section 504 and this part to similar programs and in similar situations.

(d) Any action taken, determination made, or requirement imposed by an official of another Department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the Secretary.

Subpart E—Auxiliary Matters

§ 32.48 Post-termination proceedings.

(a) An applicant or recipient adversely affected by an order suspending, terminating or refusing to grant or continue Federal financial assistance shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility, brings itself into compliance with this part and satisfies the Assistant Secretary that it will fully comply with section 504 and this part.

(b) Any applicant or recipient adversely affected by an order suspending, terminating or refusing to grant or continue Federal financial assistance may request the Assistant Secretary to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of subparagraph (a) of this paragraph. If the Assistant Secretary determines that those requirements have been satisfied, the applicant's or recipient's eligibility shall be restored.

(c) If the Assistant Secretary denies any such request, the applicant or recipient may submit a written request for a hearing, specifying why it believes the Assistant Secretary to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure specified in this part. The applicant or recipient will be restored to such eligibility if it proves at such hearing that it satisfied the requirements of paragraph (a) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order suspending, terminating or refusing to grant or continue Federal financial assistance shall remain in effect.

§ 32.49 Recordkeeping.

(a) Each recipient shall maintain for a period of not less than three years records regarding complaints and actions taken thereunder, and such employment or other records as required by the Assistant Secretary or by this part and shall furnish such information in the form required by the Assistant Secretary or as the Assistant Secretary deems necessary for the administration of the Act and regulations in this part.

(b) Failure to maintain and furnish complete and accurate records as required under this section is a ground for the imposition of appropriate sanctions.

§ 32.50 Access to records.

Each recipient shall permit access and copying during normal business hours to its places of business, books, records and accounts pertinent to compliance with the Act, and all rules and regulations promulgated pursuant thereto for the purposes of investigation.

§ 32.51 Rulings and interpretations.

Ruling under or interpretations of the Act and the regulations contained in this Part 32 shall be made by the Assistant Secretary.

APPENDIX A

Accommodations may take many forms based on the type of handicap and the needs of the individual. In developing appropriate accommodations, the individual should be consulted as to particular needs.

The following is a list of possible types of accommodations provided for guidance and technical assistance. These suggestions are not mandatory, and other forms of accommodation not described herein may be required if they are appropriate to meet the needs of particular handicapped individuals.

Accommodations for Participants and Employees

(a) Job restructuring means the procedure which includes:

(1) Identifying the separate tasks that comprise a job or group of jobs;

(2) Developing new position descriptions which retain some of the tasks of the original job; and

(3) Developing a career ladder which builds upward from the new positions which contain the lesser skilled tasks to regular jobs. A restructured job can be clearly different from the original one in terms of skills, knowledge, abilities, and work experience needed to perform the work. Job restructuring is intended to maximize the abilities of the particular handicapped person and is not intended to permit a recipient to underemploy or job-stereotype that person. A restructured job, for example, could be one in which the more highly skilled but physically less demanding duties are retained, e.g. operating controls and switches in a steel mill, and less skilled, physically taxing duties, e.g. lifting, pulling, are reassigned to non-handicapped employees.

(b) Modify job or program schedules, for example, by allowing for a flexible schedule a few days a week so that a participant or employee may undergo medical treatment or therapy. Work-times or participation in program activities may also be altered to permit handicapped individuals to travel to and from work during non-rush hours. For employees or participants who become unable to perform the duties of their positions because of a physical or mental condition, recipients may be required to grant liberal time off or leave without pay when paid sick leave is exhausted and when the disability is of a nature that it is likely to respond to treatment of hospitalization. See, e.g., 339 Federal Personnel Manual-1-3(b)(1).

(c) Modify program and work procedures and training time.

(d) Relocate particular offices or jobs or program activities so that they are in facilities accessible to and usable by qualified handicapped persons. For example, an employee or participant with a respiratory ailment can be placed in a "nonsmoking" and/or well-ventilated office.

(e) Acquire or modify equipment or devices. For hearing-impaired participants or employees, this may include placing amplifiers on telephone receivers, making telephone equipment compatible with hearing aids, providing flashing lights to supplement telephone rings or installing telecommunications devices (TDD's or TTY's). For blind participants or employees, this may include providing tape recorders or dictating

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machines for those who cannot type. For wheelchair-users, this may include raising on blocks a desk that is otherwise too low for the employee, rather than purchasing a specially-made desk. A recipient is not obligated to acquire or modify equipment that enables a participant or employee to perform a particular job or participate in a particular program until after an employee with a need for these modifications is hired for a particular office or admitted to a program.

(f) Provide readers, interpreters, and similar assistance as needed for deaf, blind and other handicapped participants or employees. In most instances, this would not require a full-time assistant.

(g) Decrease reliance solely on one form of communication. For example, for deaf participants or employees this may include supplementing program or job orientation sessions with written manuals and other visual materials. If appropriate, a visual warning system should be installed. It may also include providing flashing lights to supplement auditory signals such as sirens and alarm bells. For blind employees, this may include making some communications available in braille, enlarged print, or on cassette recordings. A recipient should tailor the accommodations listed above to the needs of the individual participants or employees who have been admitted to a particular program or hired for a particular office.

(h) Provide human relations-sensitivity training on issues pertaining to handicapped discrimination to all recipient employees.

(i) Conduct ongoing training and planning sessions with recipient supervisors, managers, personnel, technical experts and disability rights advocates to implement and evaluate methods of reasonable accommodation.

Accommodations for Applicants

(a) Announce program and job vacancies in a form readily understandable by mentally handicapped persons and by persons with impaired vision or hearing, for example, by making the announcements available in braille or on cassette tapes. § 32.4(e) of DOL's proposed section 504 regulations requires recipients to insure that communications with applicants are available to persons with impaired vision or hearing. Recipients shall undertake to explain, as appropriate, program and job announcements to mentally handicapped participants or employees or applicants. For example, this might entail notifying known mentally handicapped participants or employees of openings for positions that they might be able to perform and taking specific steps to clearly explain the nature of the program or job and its benefits to that individual.

Handicapped Persons

(b) Provide readers, interpreters, and other similar assistance during the application, testing, and interview process.

(c) Appropriately adjust or modify examinations so that the test results accurately reflect the applicant's skills, aptitude or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure). This may require the extension of traditional time deadlines or allowing, for example, a blind person to answer an examination orally.

(d) If necessary waive traditional tests and permit the applicant to demonstrate his or her skills through alternate techniques and utilization of adapted tools, aids, and devices.

PART 40—FARM LABOR CONTRACTOR REGISTRATION

Subpart A—Registration of Farm Labor Contractors and Their Full-Time Employees

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AUTHORITY: Sec. 14, 78 Stat. 924 (7 U.S.C. 2050c), and sec. 17, 88 Stat. 1659 (7 U.S.C. 2053); Secretary's Order No. 16-75, 40 FR 55913; Secretary's Order No. 1-81, 46 FR 28048; and Employment Standards' Order No. 78-1, 43 FR 51469, unless otherwise noted.

SOURCE: 41 FR 26820, June 29, 1976, unless otherwise noted.

Subpart A—Registration of Farm Labor Contractors and Their Full-Time Employees

GENERAL

§ 40.1 Purpose and scope.

(a) Congress, in enacting the Farm Labor Contractor Registration Act of 1963, as amended ("the Act"), found "that the channels and instrumentalities of interstate commerce are being used by certain irresponsible contractors for the services of the migrant agricultural laborers who exploit producers of agricultural products, migrant agricultural laborers, and the public generally * * *." It therefore requires "that all persons engaged in the activity of contracting for the services of workers for agricultural employment comply with the provisions of this Act and all regulations prescribed hereunder by the Secretary of Labor."

(b) These regulations implement this finding and policy.

(c) The Act requires certain persons to obtain Certificates of Registration or Farm Labor Contractor Employee Identification Cards prior to performing any activities which constitute engagement in farm labor contracting within the meaning of the Act and prescribes the responsibilities for holders of such certificates or employee identification cards. In addition, persons to whom farm workers are furnished by farm labor contractors also have specific responsibilities.

(d) The Act empowers the Secretary of Labor to enforce the Act, conduct investigations, issue subpenas, and, in the case of designated violations of the Act, to impose sanctions, including the refusal to issue or to renew or the suspension or revocation of a Certificate of Registration or Farm Labor Contractor Employee Identification Card. As provided in the Act, the Secretary is empowered, among other things, to impose an assessment and to collect a civil money penalty of not more than $1,000 for each violation, to deny a person the facilities and services available under the Wagner-Peyser Act, to seek a temporary or permanent restraining order in a Federal District Court, and to seek the imposition of criminal penalties on farm labor contractors or their employees who willfully and knowingly violate any provision of the Act.

(e) This Subpart A sets forth the substantive regulations promulgated by the Secretary, pursuant to authority contained in the Act, relating to the issuance, renewal or replacement of a Farm Labor Contractor Certificate of Registration or a Farm Labor Contractor Employee Identification Card, the obligations and responsibilities of persons issued such certificates or identification cards, the obligations and responsibilities of persons furnished farm workers by farm labor contractors, the grounds for refusal to issue or to renew or for the revocation or suspension of such certificates or identification cards, and the sanctions authorized by the Act. It also provides for the imposition of civil money penalties for violation of the Act or regulations issued thereunder and indicates factors to be considered by the Secretary of Labor or authorized representative in assessing the amount of such penalty.

(f) Subpart B sets forth the rules of practice for administrative hearings relating to a refusal to issue or to renew, or the suspension or revocation of either document. It also outlines the procedure for filing a challenge to a proposed administrative action relative to violations and summarizes the methods provided for collection and recovery of the civil money penalty.

§ 40.2 Definitions.

For purposes of this part:

(a) The term "person" includes any individual, partnership, association, joint stock company, trust, or corporation.

(b) The term "farm labor contractor" means "any person, who, for a fee, either for himself or on behalf of another person, recruits, solicits, hires, furnishes or transports migrant workers (excluding members of the contractor's immediate family) for agricultural employment." The term shall not include—

(1) Any nonprofit charitable organization, public or nonprofit private educational institution, or similar organization;

(2) Any farmer, processor, canner, ginner, packing shed operator, or nurseryman who personally engages in any such activity for the purpose of supplying migrant workers solely for his own operation;

(3) Any full-time or regular employee of any entity referred to in paragraph (b) (1) or (2) of this section who engages in such activity solely for his employer on no more than an incidental basis;

(4) Any person who engages in such activity—

(i) Solely within a 25 miles intrastate radius of his permanent place of residence and

(ii) For not more than 13 weeks per year;

(5) Any person who engaged in any such activity for the purpose of obtaining migrant workers of any foreign nation for employment in the United States, if the employment of such workers is subject to—

(i) An agreement between the United States and such foreign nation or

(ii) An arrangement with the Government of any foreign nation under which written contracts for the employment of such workers are provided for and the enforcement thereof is provided for through the United States by an instrumentality of such foreign nation;

(6) Any full-time or regular employee of any person holding a Certificate of Registration under this Act;

(7) Any common carrier or any full-time regular employee thereof engaged solely in the transportation of migrant workers;

(8) Any custom combine, hay harvesting, or sheep shearing operation;

(9) Any custom poultry harvesting, breeding, debeaking, sexing, or health service operation, provided the employees of the operation are not regularly required to be away from their domicile other than during their normal working hours; or

(10) Any person who would be required to register solely because the person is engaged in any such activity solely for the purpose of supplying full-time students or other persons whose principal occupation is not farmwork to detassel and rogue hybrid seed corn or sorghum for seed and to engage in other incidental farmwork for a period not to exceed four weeks in any calendar year: Provided, That such students or other persons are not required by the circumstances of such activity to be away from their permanent place of residence overnight: Provided further, That such students or other persons, if under 18 years of age, are not engaged in providing transportation in vehicles caused to be operated by the contractor.

(c) The term "fee" includes any money or other valuable consideration paid or promised to be paid to a person for services as a farm labor contractor.

(d) The term "agricultural employment" means employment in any service or activity included within the provisions of Section 3(f) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 203(f)), or Section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)) and the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.

(e) The term "migrant worker" means an individual whose primary employment is in agriculture, as defined in Section 3(f) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 203(f)), or who performs agricultural labor, as defined in Section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C., 3121(g)), on a seasonal or other temporary basis.

(f) The term "immediate family" of the farm labor contractor includes only—

(1) A spouse;

(2) Children, stepchildren, and foster children;

(3) Parents, stepparents, and foster parents; and

(4) Brothers and sisters.

(g) The term "Secretary" means the Secretary of the United States Department of Labor or the Secretary's duly authorized representative.

(h) "Administrator" means the Administrator of the Wage and Hour Division, Employment Standards Administration, United States Department of Labor, and such authorized representative as may be designated by the Administrator to perform any of the functions of the Administrator under this part.

(i)(1) "Solicitor of Labor" means the Solicitor, United States Department of Labor, and includes attorneys designated by the Solicitor to perform functions of the Solicitor under this part.

(2) "Associate Solicitor for Fair Labor Standards" means the Associate Solicitor who among other duties, is in charge of litigation for FLCRA, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20210.

(3) "Regional Solicitors/Regional Attorneys" means attorneys in charge of the various regional offices of the Office of the Solicitor.

(j)(1) The "Administrative Law Judge" means a person appointed as provided in 5 U.S.C. 3105 and Subpart B of Part 930 of Title 5 of the Code of Federal Regulations (see 37 FR 16787) and qualified to preside at hearings under 5 U.S.C. 557.

(2) The "Chief Administrative Law Judge" means the Chief Administrative Law Judge, United States Department of Labor, Washington, D.C. 20210.

(k) The term "State" means any of the States of the United States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam.

(l) "Convicted" means that a final judgment of guilt has been rendered by a court of competent jurisdiction from which no opportunity for appeal remains.

(m) A "full-time or regular employee" who is required to obtain a Farm Labor Contractor Employee Identification Card is a person who performs farm labor contracting activities solely on behalf of a farm labor contractor holding a valid Certificate of Registration and is not an independent contractor.

(n) A "Certificate of Registration" is the certificate issued by the Administrator which permits a person to engage in activities as a farm labor contractor.

(o) A "Farm Labor Contractor Employee Identification Card" is a card issued pursuant to this part permitting a full-time or regular employee of a person holding a valid Certificate of Registration to engage in activities as a farm labor contractor.

(p) A farm labor contractor is deemed an "owner" of a vehicle or housing facilities if said person has a legal or equitable interest therein.

(q) A farm labor contractor is in "control" of a vehicle or housing facilities regardless of the location of such facilities if said person is in charge of or has the power or authority to oversee, manage, superintend or administer the vehicle or housing, either personally or through an authorized agent or employee acting on behalf of said farm labor contractor, irrespective of whether compensation is paid for engaging in any of the aforesaid capacities.

(r) An "illegal alien" is any person who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment.

(s) A "common carrier" by motor vehicle is one which holds itself out to the general public to engage in transportation of passengers for hire, whether over regular or irregular routes, and which holds a valid certificate of authorization for such purposes from an appropriate local, State or Federal agency.

(t) The "Wagner-Peyser Act" is the Act of June 6, 1933 (48 Stat. 113; codified in 29 U.S.C. 49, *et seq.*), providing *inter alia* for the establishment of the U.S. Employment Service.

(u) The term "Employment Service of the various States" means a State agency vested with all powers necessary to cooperate with the U.S. Employment Service under the Wagner-Peyser Act.

[41 FR 26820, June 29, 1976, as amended at 42 FR 22364, May 3, 1977; 44 FR 17672, Mar. 23, 1979; 44 FR 72588, Dec. 14, 1979; 47 FR 24702, June 8, 1982]

§ 40.3 Certificate of Registration required.

Any person who desires to engage in any activity as a farm labor contractor, as defined in the Act and these regulations, must first obtain a Certificate of Registration authorizing each such activity.

§ 40.4 Farm Labor Contractor Employee Identification Card required.

Any person desiring to engage in recruiting, soliciting, hiring, furnishing, or transporting migrant workers solely on behalf of a farm labor contractor holding a valid Certificate of Registration, issued pursuant to the Act and these regulations, as a full-time or regular employee of such contractor must obtain a Farm Labor Contractor Employee Identification Card authorizing such activity or activities. Such identification card must be obtained prior to the employee's engagement in any of the aforementioned farm labor contractor activities and must show the name of the farm labor contractor for whom such activities are to be performed.

§ 40.5 Corporations, partnerships, associations and other organizations.

Any corporation, partnership, association or other organization which is a farm labor contractor within the meaning of the Act must obtain a Certificate of Registration. Any employee, including any officer or director of such a corporation, or partner or employee of a partnership, or member, officer, or other employee of an association or any other organization, who engage in farm labor contractor activities as a full-time or regular employee of such business organization, shall obtain a Farm Labor Contractor Employee Identification Card prior to so engaging.

§ 40.6 Public central registry.

The Administrator shall maintain a public central registry of all persons issued Certificates of Registration or Farm Labor Contractor Employee Identification Cards. All information filed therein shall be made available upon request in accordance with Part 70 of this title. Requests for information concerning such registry may be directed to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210.

§ 40.7 Compliance with State statutes.

This Act and the provisions contained in this part are intended to supplement State action and compliance with this Act or this part shall not excuse anyone from compliance with appropriate State law and regulation.

§ 40.8 Filing of applications, notices and documents.

Unless otherwise prescribed hereinafter, all applications, notices and other documents required or permitted to be filed by these regulations shall be filed in accordance with the provisions of §§ 40.220 through 40.223 of this part.

§ 40.9 Accuracy of information, statements and data.

Information, statements and data submitted in compliance with the provisions of the Act or this part are subject to Title 18, Section 1001, of the United States Code which provides:

> § 1001. *Statements or entries generally*
>
> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

REGISTRATION REQUIREMENTS

§ 40.11 Filing of applications for Certificates of Registration.

(a) Applications for an initial or renewal Certificate of Registration are available at, and may be filed in, any office of the Employment Service of the various States.

(b) Registration under the Federal law is required whether or not licensing or registration of farm labor contractors is required under State law.

§ 40.12 Execution of application for Certificate of Registration.

The application shall set forth the information required thereon, shall be subscribed and sworn to by the applicant, and shall have attached the applicant's fingerprints on Form FD-258 as prescribed by the U.S. Department of Justice.

§ 40.13 Appointment of Secretary as agent for substituted service.

No Certificate of Registration shall be issued unless and until each applicant executes a writing which shall be subscribed and sworn to and which shall contain the following declaration:

> I do hereby designate and appoint the Secretary of Labor, United States Department of Labor, as my lawful agent to accept service of summons in any action against me, at any and all times during which I have departed from the jurisdiction in which such action is commenced or otherwise have become unavailable to accept service, and under such terms and conditions as are set by the court in which such action has been commenced.

§ 40.14 Vehicle liablity insurance.

Before any person may transport, within the meaning of the Act, migrant workers and their property in any vehicle which such person owns, operates, controls, or causes to be operated, compliance with the insurance or financial responsibility requirements of the Act must be shown by submitting the following, except to the extent that other arrangements pursuant to § 40.15 of this part have been approved by the Secretary:

(a) A completed Farm Labor Contractor vehicle liability certificate of insurance showing that the passenger hazard is included (as evidence of liability insurance which covers the workers while being transported). Such certificate represents that a vehicle liability insurance policy, including a farm labor contractor liability endorsement, provides insurance in an amount not less than the amounts applicable to vehicles used in the transportation of passengers under the Interstate Commerce Act and regulations promulgated pursuant thereto. These amounts currently are as follows:

INSURANCE REQUIRED FOR PASSENGER EQUIPMENT

	12 or less passengers	More than 12 passengers
Limit for bodily injuries to or death of 1 person	$100,000	$100,000
Limit for bodily injuries to or death of all persons injured or killed in any 1 accident (subject to a maximum of $100,000 for bodily injuries to or death of 1 person)	300,000	500,000
Limit for loss or damage in any 1 accident to property of others (excluding cargo)	50,000	50,000

The certificate also represents that the insurance was obtained from an insurance carrier licensed or otherwise authorized to do business in the State in which the insurance is obtained.

(b) If the passenger hazard has been excluded from the farm labor contractor vehicle liability certificate of insurance referred to in paragraph (a) of this section applicant shall submit in addition to such certificate of insurance a completed farm labor contractor standard accident policy certificate of insurance as evidence of the issuance of a farm labor contractor standard accident policy. Said policy or policies shall be issued by an insurance carrier licensed or otherwise authorized to do business in the State in which the insurance is obtained. The coverage afforded by such substitute insurance policy or policies shall not be less than the minimum amounts required in paragraph (a) of this section.

[41 FR 26820, June 29, 1976; 41 FR 27318, July 2, 1976]

§ 40.15 Proof of financial responsibility in lieu of insurance.

Financial responsiblity in lieu of insurance may be evidenced by a liability bond executed by the applicant, identified in the instrument as the "principal," together with a third party, identified in the instrument as the "surety," to assure payment of any liability up to $500,000 for damages to persons or property arising out of the applicant's ownership of, operation of, or causing to be operated any vehicle for the transportation of migrant workers in connection with the business, activities, or operations as a farm labor contractor. The "surety" shall be one which appears on the list contained in Treasury Department Circular 570, or which has been approved by the Secretary under the Employee Retirement Income Security Act of 1974 (Pub. L. 93-406). Treasury Department Circular 570 may be obtained from the U.S. Treasury Department, Audit Staff, Bureau of Government Financial Operations, Washington, D.C. 20226.

§ 40.16 Qualifications and eligibility of insurance carriers.

(a) No certificate of insurance issued by an insurance carrier in accordance with this part will be accepted, unless said insurance carrier meets the following requirements:

(1) The insurance carrier possesses and maintains surplus funds (policyholders' surplus) of not less than the minimum amount required by the U.S. Treasury Department, which minimum shall be determined on the basis of the values of assets and liabilities as shown in its financial statements filed with and approved by the insurance department or other insurance regulatory authority of the State of domicile (home State) of such company, except in instances where in the judgment of the Administrator additional evidence with respect to such values is considered necessary; and

(2) The insurance carrier has a general policyholder's rating of B or better in the current issue of "Best's—Insurance Reports—Fire and Casualty," or a "recommended" rating in the current issue of "Best's—Insurance Reports—Life."

(b) If the insurance carrier is not listed in the current issue of Best's, or, if listed, is not assigned a general policyholder's rating of B or better or "recommended" whichever is applicable, such carrier may request approval for eligibility by submitting to the Administrator its latest financial statement, as filed with the insurance department of its home State, on the standard form, with all exhibits and schedules included, and copies of reports of examination on conditions and affairs, as prepared by State supervisory authorities and such other information as the Administrator may request.

§ 40.17 Duration of insurance or liability bond.

Any insurance policy or liability bond which is obtained pursuant to this Act shall provide the required coverage for the full period during which the applicant for a Certificate of Registration shall be engaged in transporting migrant workers within the meaning of the Act during a calendar year.

§ 40.18 Limitations on cancellation of insurance or liability bond.

Any insurance policy or liability bond required by the Act or this part shall provide that it shall not be cancelled, rescinded, or suspended, nor become void for any reason whatsoever during such period in which the insurance or liability bond is required by the Act to be effective, except upon the expiration of the term for which it is written; or unless the parties desiring to cancel shall have first given thirty (30) days notice to the Administrator. The notice will include a statement setting forth the reason for cancellation, rescission, or suspension of such policy or bond. The notice shall be in writing and forwarded via certified or registered mail, addressed to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210. Said thirty (30) days notice shall commence to run from the date notice is actually received by the Administrator.

§ 40.19 Authorization to transport migrant workers.

(a) No farm labor contractor may transport migrant workers within the meaning of the Act, unless said person shall submit—

(1) Written proof of insurance or financial responsibility, as required by §§ 40.14 and 40.15 of this part;

(2) A statement in the manner prescribed by the Secretary identifying each vehicle to be used by the applicant for the transportation of migrant workers and under the applicant's ownership or control; and

(3) Written proof that every such vehicle is in compliance with all applicable Federal and State safety and health standards and with the rules and regulations promulgated by the Bureau of Motor Carrier Safety, Federal Highway Administration of the U.S. Department of Transportation.

(b) If the farm labor contractor is to drive a vehicle for the transportation of migrant workers, the contractor must seek authorization for such activity by—

(1) Submitting with the application for the initial Certificate of Registration a doctor's certificate on the prescribed form, and when applying for a renewal Certificate of Registration with authorization to drive, a new completed doctor's certificate must be submitted if the previous doctor's certificate is more than 3 years old; and

(2) Submitting evidence of an appropriate license to operate such vehicle.

§ 40.20 Authorization to house migrant workers.

(a) If an applicant for a Certificate of Registration is the owner of or will control facilities to be used for housing migrant workers during any period for which such a certificate is sought, said applicant shall submit—

(1) A statement identifying such facilities; and

(2) Written proof that the housing facilities comply with Federal safety and health standards as prescribed in either 20 CFR 654.404 *et seq.* or 29 CFR 1910.142 and applicable State standards of safety and health. Such written proof may be either a statement signed by the person to whom migrant workers are furnished by a farm labor contractor attesting that the housing facilities comply with Federal safety and health standards and also with applicable State safety and health standards, or a written statement containing an attestation with equal effect and signed by the applicant, or written statements issued by an authorized State and Federal Agency.

(b) Should the required written proof be unavailable at the time of filing an application, the applicant must attest in writing that migrant workers in the applicant's crew will not be housed in any facilities under the ownership or control of the applicant that do not conform to all applicable Federal and State safety and health standards. In such event, if otherwise eligible, the applicant will be issued a certificate of registration without a housing authorization. This certificate may be amended to include an authorization to house migrant workers at such time as the required written proof is forthcoming.

(Sec. 14, 78 Stat. 924 (7 U.S.C. 2050c), and sec. 17, 88 Stat. 1659 (7 U.S.C. 2053); Secretary's Order No. 16-75, 40 FR 55913; and Employment Standards' Order 2-75, 40 FR 56743)

[43 FR 44839, Sept. 29, 1978, as amended at 45 FR 14186, Mar. 4, 1980; 45 FR 34879, May 23, 1980]

§ 40.21 Expiration and renewal of Certificate of Registration.

A Certificate of Registration, once issued, may not be transferred or assigned and shall be effective for the remainder of the calendar year during which it was issued unless suspended or revoked. In any case in which an application for renewal of a valid Certificate of Registration submitted in accordance with the requirements of §§ 40.11 through 40.20 of these regulations has been made on or before November 30 of the year preceding the year for which renewal is sought, the authority to operate as a farm labor contractor under an existing certificate shall not expire until the renewal application shall have been finally determined by the Administrator.

§ 40.22 Replacement of Certificate of Registration.

If a Certificate of Registration is lost or destroyed, a duplicate Certificate of Registration may be obtained by the submission to the regional office that issued it or to any regional office of the Wage and Hour Division, Employment Standards Administration of a written statement explaining its loss or destruction, indicating where the original application was filed and requesting that a duplicate be issued.

EMPLOYEE IDENTIFICATION

§ 40.31 Filing of application for Farm Labor Contractor Employee Identification Card.

(a) Applications for an initial or renewal Farm Labor Contractor Employee Identification Card are available at, and may be filed in, any office of the Employment Service of the various States.

(b) An Employee Identification Card issued under Federal law is required whether or not registration, licensing or identification of such person is required under State law.

§ 40.32 Execution and Content of application for Farm Labor Contractor Employee Identification Card.

(a) The application shall set forth the information required thereon, shall be subscribed and sworn to by the applicant, and shall have attached the applicant's fingerprints on Form FD-258 as prescribed by the U.S. Department of Justice.

(b) If a full-time or regular employee of a farm labor contractor is to drive any vehicle for the transportation of migrant workers in connection with the business activities or operations of a farm labor contractor, such employee shall seek authorization for such activity by (1) submitting with the application for the initial Employee Identification Card a doctor's certificate on the prescribed form, and when applying for a renewal of such card with authorization to drive, a new completed doctor's certificate must be submitted if the previous doctor's certificate is more than 3 years old; and (2) submitting evidence of an appropriate license to operate such vehicle.

§ 40.33 Authorized use of Farm Labor Contractor Employee Identification Card.

(a) Any employee holding a valid Farm Labor Contractor Employee Identification Card described in § 40.4 of this part is authorized to engage in the activity or activities stated on such card solely on behalf of the employee's named employer who is a holder of a valid Certificate of Registration without obtaining a Certificate of Registration as a farm labor contractor in such employee's own name.

(b) The authorization provided by Section 4(b) of the Act and paragraph (a) of this section shall continue as long as the Farm Labor Contractor Employee Identification Card—

(1) Remains valid;

(2) Is in the immediate personal possession of such holder when engaging in any activity authorized thereby; and

(3) Is exhibited to any person with whom said holder undertakes to deal in such capacity.

§ 40.34 Replacement of Farm Labor Contractor Employee Identification Card, lost card or change of employment.

(a) If a Farm Labor Contractor Employee Identification Card is lost or destroyed, a duplicate card may be obtained by submitting to the regional office that issued it or to any regional office of the Wage and Hour Division, Employment Standards Administration, a written statement explaining its loss or destruction, indicating where the original application was filed, the name and number of the farm labor contractor by whom employed, and requesting that a duplicate be issued.

(b) A Farm Labor Contractor Employee Identification Card is valid only during the period in which the holder is a full-time or regular employee of the registered farm labor contractor named on the identification card. If, prior to the expiration of the identification card, the holder, through a change in employment, should become a full-time or regular employee of a different registered farm labor contractor, a replacement identification card which names the new employer may be obtained by submitting to the regional office that issued the original card or to any regional office of the Wage and Hour Division, Employment Standards Administration a written statement that includes the date of the change in employment status and the name, home address, current address and certificate registration number of the new employer.

(c) Any change of employment referred to in paragraph (b) of this section must be reported immediately.

§ 40.35 Expiration and renewal of Farm Labor Contractor Employee Identification Card.

(a) A Farm Labor Contractor Employee Identification Card, once issued, may not be transferred or assigned and shall expire on December 31 of the year of issuance, unless suspended or revoked prior thereto. The holder of such a card may request renewal of such card by executing and filing in any office of the Employment Service of the various States, the following—

(1) An application for renewal;

(2) Upon request, a completed U.S. Department of Justice Fingerprint Card, Form FD-258; and

(3) A prescribed doctor's certificate and appropriate operator's license in accordance with § 40.32(b), if such applicant is to be engaged as a driver for transporting migrant workers.

(b) In any case in which an application for renewal of an Employee Identification Card has been submitted in accordance with the requirements of paragraph (a) of this section on or before November 30 of the year preceding the year for which renewal is sought, the authority to operate as a full-time or regular employee of a holder of a Certificate of Registration shall not expire until the renewal application shall have been finally determined by the Administrator.

ACTION ON APPLICATIONS

§ 40.41 Office of filing, action.

(a) Each application for a Certificate of Registration or a Farm Labor Contractor Employee Identification Card filed at any of the offices designated in §§ 40.11 and 40.31 respectively shall be transmitted promptly to the appropriate regional office of the Wage and Hour Division, Employment Standards Administration, except as provided in paragraph (b) of this section.

(b) Each application for a Certificate of Registration or a Farm Labor Contractor Employee Identification Card filed in a State authorized to issue such documents on behalf of the Administrator shall be processed by the appropriate State agency. See § 40.43 of this Part.

[42 FR 43626, Aug. 30, 1977]

§ 40.42 Issuance, refusal to issue, suspension, revocation or refusal to renew: Farm Labor Contractor Certificate of Registration or Farm Labor Contractor Employee Identification Card.

(a) The Administrator or authorized representative shall:

(1) Review each application transmitted by the offices of filing and determine whether such application is complete and properly executed.

(2) When appropriate, notify the applicant in writing of any incompleteness or error in execution of an application and return the application for correction and completion.

(3) Determine after appropriate investigation whether the applicant has complied with the requirements of the Act and this part and if appropriate issue a Certificate of Registration or a

Farm Labor Contractor Employee Identification Card authorizing the performance of any or all activities permitted under the Act.

(b) The Administrator, upon notice and hearing in accordance with Subpart B of this part, may refuse to issue, may suspend, revoke or refuse to renew a Certificate of Registration or a Farm Labor Contractor Employee Identification Card when an investigation presents grounds as set forth in § 40.63 of this part for such action.

[41 FR 26820, June 29, 1976; 41 FR 27318, July 2, 1976]

§ 40.43 Issuance of Farm Labor Contractor Certificates of Registration and Farm Labor Contractor Employee Identification Cards by States.

(a) Pursuant to Section 8 of the Act, the Secretary may enter into an agreement with any State authorizing that State to issue Certificates of Registration and Farm Labor Contractor Employee Identification Cards on behalf of the Administrator.

(b) Every agreement entered into pursuant to this section shall require that Certificates of Registration and Farm Labor Contractor Employee Identification Cards be issued by the State in conformity with the provisions of the Act, and the regulations, interpretations and guidelines issued thereunder.

(c) Any agreement entered into pursuant to this section shall be terminated, without hearing, after written notice by the Secretary, the Administrator, or the appropriate State official.

(d) Every Certificate of Registration and every Farm Labor Contractor Employee Identification Card, whether issued by a State pursuant to this section or issued by the Administrator under § 40.42 of this part, shall be valid in any State.

(e) The Secretary in accordance with the provisions of this section, has entered into an agreement with each State listed herein below;

Florida.
New Jersey.
Virginia.

(f) Every agreement entered into pursuant to this Section is available for public inspection and copying in accordance with 29 CFR Part 70.

(8 U.S.C. 2047; Pub. L. 88-582, sec. 8, Sept. 7, 1964; 78 Stat. 923)

[42 FR 43627, Aug. 30, 1977, as amended at 44 FR 75628, Dec. 21, 1979]

OBLIGATIONS OF AND PROHIBITED ACTS

§ 40.51 Obligations of a farm labor contractor.

The Act and these regulations imposes the following obligations on all farm labor contractors:

(a) The farm labor contractor shall obtain an appropriate Certificate of Registration before engaging in any activities of a farm labor contractor.

(b) The farm labor contractor shall provide the Secretary with a notice of each and every address change within 10 days after such change of address.

(c) Whenever a farm labor contractor obtains a vehicle or learns of the intended use of a vehicle for the transportation of migrant workers by said contractor and such vehicle or vehicles are under the contractor's ownership or control, said contractor shall, within 10 days after he obtains or learns of such intended use—

(1) Furnish a statement which shall identify each such vehicle;

(2) Provide written proof that each such vehicle conforms to all applicable Federal and State safety and health standards; and

(3) Furnish written proof of insurance or financial responsibility for such vehicle or vehicles to the office which originally had issued the Certificate of Registration.

(d) If the farm labor contractor is to drive a vehicle for the transportation of migrant workers, the contractor must seek advance authorization for such activity by (1) submitting on a prescribed form a doctor's certificate with the application for the initial Certificate of Registration and when applying for a renewal certificate with authorization to drive, a new completed doctor's certificate, if the previous doctor's certificate is more than 3 years old; and (2) submitting evidence of an appropriate license to operate such vehicle.

(e) If the farm labor contractor obtains housing facilities, or learns that certain facilities will be used for housing migrant workers and such facilities are under the ownership or control of the contractor, said contractor shall provide the documentation as prescribed in paragraph (a) of § 40.20 to the regional office which had issued the initial certificate. This document shall be submitted within 10 days after the contractor obtains or learns of the intended use of such real property and prior to its actual use.

(f) A registered farm labor contractor shall carry the Certificate of Registration at all times while engaging in farm labor contracting activities and shall exhibit the same to all persons with whom the contractor intends to deal as a farm labor contractor, including, but not limited to, workers, growers, processors, and State Employment Agency personnel, prior to so dealing.

(g) The farm labor contractor shall ascertain and disclose to the worker to the best of the contractor's knowledge and belief at the time the worker is recruited, the following information in writing, in a language and manner understandable to such worker on a form such as WH-416 (information on wages and working conditions)—

(1) The area of employment;

(2) The crops and operations on which the worker may be employed;

(3) The transportation, housing, and insurance to be provided the worker;

(4) The wage rates to be paid the worker;

(5) The charges to be made by the farm labor contractor for such contractor's services;

(6) The period of employment;

(7) The existence of a strike or other concerted stoppage, slowdown, or interruption of operations by employees at a place of contracted employment; and

(8) The existence of any arrangements between the farm labor contractor and any owner, proprietor, or agent of any commercial or retail establishment in the area of employment, under which the contractor is to receive a commission or any other benefit resulting from any sales provided to such establishment from the migrant workers.

(h) Upon arrival at a given place of employment, the farm labor contractor shall post in a conspicuous place a written statement of the terms and conditions of that employment in a language in which the workers are fluent and written in a manner understandable by such workers.

(i) In the event the contractor owns, manages, supervises, or otherwise controls the housing facilities, such person shall post in a conspicuous place the terms and conditions of occupancy in a language in which the worker is fluent and in a manner understandable by such worker.

(j) The farm labor contractor shall provide to each migrant worker engaged in agricultural employment with whom the contractor deals in a capacity as a farm labor contractor a statement of all sums paid to such contractor (including sums received on behalf of such migrant worker) on account of the labor of such migrant worker. The farm labor contractor shall additionally provide each such worker with an itemized statement showing all sums withheld by said contractor from the amount received on account of the labor of such worker, and the purpose for which such sums were withheld.

(k) In the event the farm labor contractor pays the migrant workers engaged in agricultural employment, either on behalf of such contractor or on behalf of another person, such contractor shall also keep payroll records which shall show for each worker in each workweek of the payroll period, name in full, home address, total earnings, itemized statement of all withholdings or deductions from earnings, net earnings, the hours worked each day, the total hours worked each workweek, and hourly rate of pay. If the worker is employed on a time basis other than hourly, this record shall also show the time period constituting the basis for payment. In addition, if the worker is employed on a piece rate basis, the payroll records shall show the number of units of work performed and the rate per unit.

(l) The farm labor contractor shall provide to the person to whom a migrant worker is furnished all information and records required to be kept by such contractor under paragraph (k) of this section and all information required to be provided to any migrant worker under paragraph (j) of this section.

(m) The farm labor contractor shall promptly pay or contribute when due to the individuals entitled thereto all moneys or other things of value entrusted to said farm labor contractor by any farm operator for such purposes.

(n) A farm labor contractor shall refrain from requiring any worker to purchase any goods solely from such farm labor contractor or any other person.

(o) The farm labor contractor shall refrain from violating or from taking any action in violation of Section 5(b) of the Act.

(p) A farm labor contractor shall refrain from recruiting, employing or utilizing with knowledge the services of any person who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment, and must evidence an affirmative showing of a *bona fide* inquiry of each prospective employee's status as a United States citizen or as a person lawfully authorized to work in the United States. Such affirmative showing will be deemed to be met by written documentation that reliance in good faith was based on any of the following:

(1) Acceptable evidence of United States citizenship—

(i) Birth certificate.

(ii) Certificate of citizenship.

(iii) Certificate of naturaliztion.

(iv) U.S. identification card (INS—Form I-179 or I-197).

(v) Passport issued by United States identifying person as citizen of United States.

(vi) Consular report of birth (State Department Form FS-240).

(vii) Baptismal certificate under seal of a church or other religious body which practices infant baptism showing the individual's date and place of birth within the United States, its territories or possessions.

(viii) A document under seal of a religious body which does not practice infant baptism showing the individual's date and place of birth within the United States, its territories or possessions.

(ix) Tribal enrollment card in an American Indian tribe recognized by the Bureau of Indian Affairs.

(x) Other written advice from The Immigration and Naturalization Service attesting that such person is a citizen of the United States.

(xi) A copy of a declaration, signed by the applicant, under penalty of prosecution for violation of Title 18 U.S.C. § 1001, and witnessed by the signature of the appropriate official of the Employment Service, affixed in the presence of the applicant, filed with the United States Employment Service or any of its affiliated offices attesting that such person is a citizen of the United States, was born at the place stated and on the date set forth thereon, and reciting the following additional information:

(A) Social Security number such (voluntary) and,

(B) Names and addresses of three adult citizens of the United States who can be contacted to verify declarant's citizenship.

(xii) A certificate issued by the Department of Labor, Bureau of Employment Security, Commonwealth of Puerto Rico which attests that, based upon examination of any of the documents prescribed by paragraphs (i) through (xi) above, the individual named and identified by the picture on that certificate was born within the United States (including its territories and possessions) at the place and on the date specified thereon and which sets forth such individual's home address (street and number, city, State, zip code) and Social Security number.

(2) INS—Form I-151 or I-551, Alien Registration Receipt Card (green card), which is proof that the alien has been lawfully admitted to the United States for permanent residence and may accept any employment in this country without restriction. It is a green or blue-green wallet-sized laminated card, bearing a photograph of the alien and contains information concerning his alien registration number, date of admission as an immigrant, birth date and sex.

(3) INS—Form I-94 (with or without a passport)—

(i) INS—Form I-94 bearing an employment authorization consisting of the words "Employment Authorized."

(ii) INS—Form I-94 bearing the designation of H-2, as endorsed on the front or back of the form, authorizing a person to engage only in agricultural employment during the period of such person's authorized stay in the United States.

(4) Any other written advice from the Immigration and Naturalization Service (INS) that such person is an alien authorized by INS to accept such employment in agriculture in the United States.

(5) United States Armed Forces Discharge Papers.

(q) A farm labor contractor is responsible for assuring that every full-time or regular employee employed by such Contractor has obtained either a Farm Labor Contractor Employee Identification Card or a Certificate of Registration, as required by the Act and these regulations, prior to such employee's engagement in any activity enumerated in Section 3(b) of the Act.

OMB CONTROL No. 1215-0128. (47 FR 145, Jan. 5, 1982)

[41 FR 26820, June 29, 1976, as amended at 45 FR 35325, May 27, 1980; 45 FR 40985, June 17, 1980; 45 FR 55192, Aug. 1, 1980; 47 FR 145, Jan. 5, 1982]

§ 40.52 Obligations of person holding a valid Farm Labor Contractor Employee Identification Card.

Any person holding a valid Farm Labor Contractor Employee Identification Card in accordance with the provisions of §§ 40.31 through 40.35 of this part is subject to and is required to comply with all of the provisions of the Act and these regulations to the same extent as if said person had been required to obtain a Certificate of Registration in such person's own name.

OMB CONTROL No. 1215-0128. (47 FR 145, Jan. 5, 1982)

[41 FR 26820, June 29, 1976, as amended at 47 FR 145, Jan. 5, 1982]

§ 40.53 Obligations of grower, processor, and other user.

Any person who is furnished any migrant worker by a farm labor contractor shall—

(a) Maintain all payroll records required to be kept by such person under Federal law;

(b) Obtain and maintain records containing the information required to be provided to such person by the farm labor contractor under Section 6(e) of the Act and § 40.51(l) of this part with respect to migrant workers paid by a farm labor contractor; and

(c) Determine before engaging the services of a farm labor contractor to supply farm labor that the contractor possess a Certificate of Registration that is in full force and effect at the time he contracts with the farm labor contractor.

OMB CONTROL No. 1215-0128. (47 FR 145, Jan. 5, 1982)

[41 FR 26820, Jan. 29, 1976, as amended at 47 FR 145, Jan. 5, 1982]

§ 40.54 Discrimination prohibited.

(a) Any person is deemed to have violated the Act if such person intimidates, threatens, restrains, coerces, blacklists, discharges, or in any manner discriminates against any migrant worker who for just cause has—

(1) Filed a complaint with reference to this Act with the Secretary of Labor; or

(2) Instituted or caused to be instituted any proceeding under or related to this Act; or

(3) Has testified or is about to testify in any proceeding under or related to this Act; or

(4) Has exercised on behalf of others any right or protection afforded by this Act to such persons.

(b) A complaint alleging such discriminatory conduct may be filed with the Secretary within 180 days after the happening of such unlawful acts.

VIOLATIONS AND SANCTIONS

§ 40.61 Report of violations, investigations, issuance of subpenas.

(a) Any person may report a violation of the Act or regulations of this part to the Administrator by advising any local office of the Employment Service of the various States, or any office of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or any other representative of the Administrator. The office or person receiving such a report shall refer it to the regional office of the Wage and Hour Division, Employment Standards Administration for the region in which the reported violation is alleged to have occurred and the Administrator shall direct that an appropriate investigation of any alleged violation shall be made.

(b) The Administrator, upon receipt of a complaint or upon his own initiative, may investigate and gather data respecting such case, may enter and inspect such places and records (and make copies thereof), may question persons being investigated or proceeded against, may issue subpenas requiring the attendance and testimony of witnesses or the production of any documentary or other evidence from any place in the United States at any designated place of hearing as may be appropriate, to determine whether a violation of this Act or this part has been committed. In connection with the foregoing, the said officer or his agent may administer oaths and affirmations, examine witnesses and receive evidence.

(c) In case of disobedience to a subpena, the aid of a Federal District Court which is authorized to issue an order requiring the person or business organization to obey such subpena may be invoked.

(d) Investigations are to be conducted in a manner which protects the confidentiality of any complainant or other person who provides information on a confidential basis, in accordance with Part 70 of this title.

§ 40.62 Sanctions.

(a) Violations of the Act or regulations thereunder may result in the imposition of civil injunctive relief or, in the case of willful and knowing violations by a farm labor contractor or employee thereof, the imposition of criminal sanctions. In addition, civil money penalties of not more than $1,000 for each violation may be assessed administratively. Further, administrative action may be taken to suspend, revoke, refuse to issue or renew a Certificate of Registration or Employee Identification Card, and to deny the facilities and services afforded by the Wagner-Peyser Act. The taking of any one of the above actions shall not be a bar to the concurrent taking of any other action enumerated in this section.

(b) If, upon the receipt of a complaint in which a worker has alledged discriminatory action of a type specified in section 13(a) of the Act and § 40.54 of this part, the ensuing investigation results in a determination that such discriminatory conduct had been committed, an action shall be instituted in an appropriate Federal District Court to restrain such violation and to seek such other relief as may be appropriate, including rehiring or reinstatement of the worker, with backpay, or damages.

§ 40.63 Certificates of Registration and Farm Labor Contractor Employee Identification Cards—grounds for revocation or suspension or refusal to issue or to renew.

Certificates of Registration and Farm Labor Contractor Employee Identification Cards may be revoked or suspended, or issuance or renewal thereof refused, if the applicant or registrant—

(a) Fails or refuses to comply with any provisions of § 40.51 of this part;

(b) Knowingly has made any misrepresentations or false statements in an application for a Certificate of Registration or for Farm Labor Contractor Identification Card or any renewal thereof;

(c) Knowingly has given false or misleading information to migrant workers concerning the terms, conditions, or existence of agricultural employment;

(d) Has failed, without justification, to perform agreements entered into or arrangements with farm operators;

(e) Has failed, without justification, to comply with the terms of any working arrangements that the applicant or registrant has made with migrant workers;

(f) Has failed to show financial responsibility satisfactory to the Administrator or has failed to keep in effect a policy of insurance as required by section 5(a)(2) of the Act;

(g) Has recruited, employed or utilized, with knowledge, the services of any person, who is an alien not lawfully admitted for permanent residence, or who has not been authorized by the Attorney General to accept employment;

(h) Has been convicted of any crime under State or Federal law relating to gambling or to the sale, distribution, or possession of alcoholic liquors in connection with or incident to his activities as a farm labor contractor; or has been convicted of any crime under State or Federal law involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, prostitution, or peonage; where the date of the judgment of conviction of any crime as specified herein has been entered with a period of 5 years preceding the action of the Secretary under this paragraph;

(i) Has failed to comply with rules and regulations as required by §§ 40.19 and 40.20 of this part;

(j) Knowingly employs or continues to employ any person, to whom subsection (b) of section 4 of the Act applies, who has taken any action, except for that listed in paragraph (f) of this section, which could be used by the Administrator under this section to refuse to issue a Certificate of Registration;

(k) Is not in fact the real party in interest in any such application for a Certificate of Registration and that the real party in interest is a person, firm, partnership, association, or corporation who previously has been denied a Certificate of Registration, has had a Certificate of Registration suspended or revoked, or who does not presently qualify for a Certificate of Registration;

(l) Has failed to furnish, or refused to allow a designated representative of the Administrator to obtain appropriate information necessary to make a determination of eligibility for a Certificate of Registration or a Farm Labor Contractor Employee Identification Card as provided by Sections 5(b) and 7 of the Act;

(m) Has used a vehicle for the transportation of migrant workers, or has used real property for the housing of migrant workers while such vehicle or real property failed to conform to all applicable Federal and State safety and health standards, to the extent any such vehicle or real property has come within the ownership or control of such farm labor contractor;

(n) Has intimidated, threatened, restrained, coerced, blacklisted, discharged, or in any manner discriminated against any migrant worker who has filed a complaint or instituted or caused to be instituted any proceeding or has exercised any right or protection afforded by this Act, whether such action is on behalf of said worker or on behalf of others; or

(o) Has failed to comply with any of the provisions of this Act or any regulations issued thereunder.

§ 40.64 Denial of facilities and services of Wagner-Peyser Act.

(a)(1) Upon determination by the Secretary that a person has knowingly engaged the services of a farm labor contractor who did not possess a valid Certificate of Registration as required by the Act, such person may be denied the facilities and services authorized by the Wagner-Peyser Act for a period of up to 3 years.

(2) Evidence that a farm labor contractor possesses a Certificate of Registration that is in full force and effect may consist of:

(i) The Certificate of Registration submitted by the farm labor contractor; or

(ii) A confirmation of such fact obtained from the Secretary's public central registry of all persons issued Certificates of Registration.

(3) If an investigation results in a finding of violation, the Secretary shall notify any person charged with such violation of any proposal to deny such person the facilities and services available under the Wagner-Peyser Act, and of such person's right to re-

quest a hearing, as prescribed in Subpart B of this part.

(b) If a farm labor contractor fails or refuses to exhibit a valid Certificate of Registration to all persons with whom he intends to deal in his capacity as a farm labor contractor prior to so dealing, as required by section 6(a) of the Act and § 40.51(f) of this part, the contractor shall be denied the facilities and services authorized by the Wagner-Peyser Act and shall also be subject to such penalties as are provided in the Act or in this part.

§ 40.65 Civil money and other administrative penalties.

(a) Where violations by any persons of the Act or any regulations promulgated thereunder have been disclosed and have resulted in proposals to refuse renewal or issuance or to suspend or to revoke a Certificate of Registration or a Farm Labor Contractor Employee Identification Card or to assess a civil money penalty or to deny persons the services and facilities of the Wagner-Peyser Act, anyone so charged is entitled to an opportunity for a proceeding before an administrative law judge as described in Subpart B of this part.

(b) Any assessment of a civil money penalty shall be based on the available evidence and shall take into consideration among others, one or more of the following factors:

(1) Previous history of violation or violations.

(2) The number of migrant workers affected by the violation or violations.

(3) The gravity of the violation or violations.

(4) Efforts made in good faith to comply with the Act.

(5) Explanation of person charged with the violation or violations.

(6) Assurances of future compliance, taking into account the public health, interest or safety.

(7) Financial gain on the part of the violator or financial losses to worker or workers.

§ 40.66 Waiver of rights.

Any agreement by an employee purporting to waive or modify any rights inuring to said person under this Act or rules promulgated thereunder shall be void as contrary to public policy, except a waiver or modification of rights or obligations hereunder in favor of the Secretary shall be valid for purposes of enforcement of the provisions of the Act or rules promulgated thereunder.

Subpart B—Administrative Proceedings

GENERAL

§ 40.101 Establishment of procedures and rules of practice.

This subpart codifies, amends, and establishes the procedures and rules of practice necessary for the enforcement of the Act.

§ 40.102 Applicability of procedures and rules.

(a) The procedures and rules contained herein establish the administrative processes necessary for a determination:

(1) To refuse to issue or renew, or to suspend or revoke, either a "Certificate of Registration" or a "Farm Labor Contractor Employee Identification Card";

(2) To impose a civil money penalty for any violation of the Act or the provisions of Subpart A of these regulations;

(3) To deny the facilities and services authorized by the Wagner-Peyser Act; and

(4) To the filing of a complaint alleging discriminatory conduct.

(b) The procedures and rules contained herein also summarize the methods to be utilized in the assessment, collection, and recovery of any civil money penalties administratively assessed under the Act and these regulations.

(c) Finally, the procedures and rules contained herein specify the administrative responsibility resulting from section 5(a)(5) of the Act relating to the service of summons upon the Secretary on behalf of farm labor contractors.

PROCEDURES RELATING TO HEARINGS ON REFUSAL TO ISSUE OR RENEW, OR TO SUSPEND OR REVOKE, A CERTIFICATE OF REGISTRATION OR A FARM LABOR CONTRACTOR EMPLOYEE IDENTIFICATION CARD

§ 40.111 Refusal to issue or renew, or to suspend or revoke—written notice required.

(a) Whenever the Administrator finds and determines that a Certificate of Registration or a Farm Labor Contractor Employee Identification Card should be suspended or revoked or that issuance or renewal thereof should be refused, the applicant or holder of the Certificate of Registration or identification card shall be notified in writing of such determination.

(b) In cases involving a determination relating to a farm labor contractor, written notice shall also be given to every holder of an Employee Identification Card which was issued or applied for on behalf of such farm labor contractor.

(c) In cases involving a determination relating to a Farm Labor Contractor Employee Identification Card, written notice shall also be given to the holder of the Certificate of Registration under which the identification card was issued or applied for.

§ 40.112 Contents of notice.

The notice referred to in § 40.111 shall:

(a) Set forth the determination of the Administrator and the reason or reasons therefor.

(b) Apprise the applicant or holder of the right to request a hearing on the determination to refuse to issue, or renew or to suspend or revoke, a Certificate of Registration or a Farm Labor Contractor Employee Identification Card.

(c) Apprise the applicant or holder of the time and method for making such request, and the procedures relating thereto, in accordance with the provisions of § 40.113.

(d) Inform the applicant or holder that in the absence of a request for a hearing, the determination of the Administrator shall become the final and unappealable order of the Secretary.

§ 40.113 Request for hearing.

(a) Any applicant or holder desiring to request an administrative hearing on the determination to refuse to issue or renew, or to suspend or revoke, a Certificate of Registration or a Farm Labor Contractor Employee Identification Card shall make such request in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, no later than twenty (20) days after the service of the notice referred to in § 40.111.

(b) The request for such hearing shall be in writing, signed by the person making the request or by an authorized representative of such person, and delivered in person or by mail to the above address, within the time set forth in paragraph (a) of this section. For the affected party's protection, if this notice is by mail, such notice should be by certified mail.

PROCEDURES RELATING TO HEARINGS ON CIVIL MONEY PENALTIES

§ 40.121 Assessment of civil money penalty, written notice required.

Whenever the Administrator finds that any person has violated any provision of the Act or these regulations and has determined that a civil money penalty shall be assessed, a written notification of such determination shall be served upon the person against whom such penalty has been assessed.

§ 40.122 Contents of notice.

The notice referred to in § 40.121 shall:

(a) Set forth the determination of the Administrator and shall include:

(1) A description of each violation for which a civil money penalty has been assessed; and

(2) The amount of civil money penalty assessed for each violation identified in paragraph (a)(1) of this section.

(b) Apprise the affected person or persons of the right to request a hearing on the determination of the assessment of the civil money penalty or penalties referred to in § 40.121.

(c) Inform the affected person or persons that in the absence of a request for a hearing, the determination of the Administrator shall become the final and unappealable order of the Secretary.

(d) Apprise the affected person or persons of the time and method for making such request, and the procedures relating thereto, in accordance with the provisions of § 40.123.

§ 40.123 Request for hearing.

(a) Any person desiring to request an administrative hearing on the determination to assess civil money penalties shall make such request in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210, no later than thirty (30) days after the service of the notice referred to in § 40.121.

(b) The request for such hearing shall be in writing, signed by the person making the request or by an authorized representative of such person, and delivered in person or by mail to the above address, within the time set forth in paragraph (a) of this section. For the affected person's protection, if this notice is by mail, such notice should be by certified mail.

§ 40.124 Civil money penalties—payment and collection.

Where the assessment is directed in a final order by the Secretary or in a final judgment issued by a Federal District Court, the amount of the penalty is immediately due and payable to the United States Department of Labor. The person charged with such penalty shall remit promptly the amount thereof, as finally determined, to the Secretary by certified check or by money order, made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Administrator, either in Washington, D.C., or to the Regional Wage and Hour Division Office located in the area in which the violations occurred.

PROCEDURES RELATING TO HEARINGS FOR DENIAL OF WAGNER-PEYSER FACILITIES

§ 40.131 Denial of facilities and services authorized by Wagner-Peyser Act.

Whenever the Administrator finds and determines that any person should be denied the facilities and services authorized by the Wagner-Peyser Act for violations of the Farm Labor Contractor Registration Act (see § 40.64 of Subpart A) or these regulations, that person shall be notified in writing of such determination and the length of such denial.

§ 40.132 Contents of notice.

The notice referred to in § 40.131 shall:

(a) Set forth the determination of the Administrator and the reason or reasons therefor.

(b) Apprise the affected person or persons of the right to request a hearing on the determination to deny the Wagner-Peyser Act facilities and services referred to in § 40.131.

(c) Inform the affected person or persons that in the absence of a request for a hearing, the determination of the Administrator shall become the final and unappealable order of the Secretary.

(d) Apprise the affected person or persons of the time and method for making such request, and the procedures relating thereto, in accordance with the provisions of § 40.133.

§ 40.133 Request for hearing.

(a) Any person desiring to request an administrative hearing on the determination referred to in § 40.131 shall make such request in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210, no later than twenty (20) days after the service of the notice referred to in § 40.131.

(b) The request for such hearing shall be in writing, signed by the person making the request or by an authorized representative of such person, and delivered in person or by mail to the above address, within the time set forth in paragraph (a) of this section. For the affected party's protection, if this notice is by mail, such notice should be by certified mail.

§ 40.134 Automatic denial of facilities and services authorized by Wagner-Peyser Act—duration.

In accordance with section 6(a) of the Act, the facilities and services authorized by the Wagner-Peyser Act are denied to any farm labor contractor or holder of a Farm Labor Contractor Employee Identification Card issued under this Act, during the period and whenever such person fails to exhibit a valid Certificate of Registration or Employee Identification Card to a representative of the employment service.

PROCEDURES RELATING TO THE FILING OF A COMPLAINT ALLEGING DISCRIMINATORY CONDUCT

§ 40.141 Discriminatory conduct—complaint.

Any worker who believes that he or she has been discriminated against within the meaning of section 13 of the Act and § 40.54, may file a complaint with the Secretary within one-hundred and eighty (180) days of such discriminatory act.

FORM AND TIME OF REQUEST FOR HEARING

§ 40.151 Form of request.

No particular form is prescribed for any request for hearing permitted by this part. However, any such request shall:

(a) Be typewritten or legibly written;

(b) Be directed to the issue or issues stated in the notice of determination giving rise to such request;

(c) State the specific reason or reasons why the person requesting the hearing believes such determination is in error;

(d) Be signed by the person making the request or by an authorized representative of such person; and

(e) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

§ 40.152 Time for making request.

Any request for a hearing pursuant to these regulations shall be made within the time prescribed by §§ 40.113, or 40.123, or 40.133, of this subpart, as may be appropriate to the matter in controversy, except that if such request is filed pursuant to a notice involving a combination of any of the foregoing, any one of which requires thirty (30) days notice, the time for such notice shall be thirty (30) days after issuance of such notice of determination.

PROCEDURES RELATING TO SUBSTITUTE SERVICE

§ 40.161 Change of address.

(a) Pursuant to sections 5(a)(5) and 5(d) of the Act and §§ 40.13, 40.51(b), and 40.52, every holder of a certificate or identification card shall notify the Administrator within ten (10) days after each and every change of address.

(b) The notification required in paragraph (a) shall be in writing, by certified mail, and addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, 200 Constitution Avenue, NW., Washington, D.C. 20210.

(c) Such change of address shall be deemed effective upon receipt by the Administrator, unless a later date is specified in the notice.

§ 40.162 Substituted service.

(a) Pursuant to section 5(a)(5) of the Act and § 40.13, the Secretary shall accept service of summons for any person issued and holding a valid Certificate of Registration or a valid Employee Identification Card whenever such person has departed from the jurisdiction in which the action giving rise to the service of summons was commenced or whenever such person has become otherwise unavailable to accept service.

(b) Acceptance of service of summons referred to in paragraph (a) of this section shall be under such terms and conditions as are set by the court in which such action has been commenced.

(c) To be effective, such service shall be made by delivery personally or by certified mail to the Administrator of the Wage and Hour Division, either in Washington, D.C., or to the Office of the Administrator, located in the area in which the action has been commenced.

§ 40.163 Responsibility of Secretary for service.

Upon receipt of any substituted service, as described in § 40.162, the same shall be forwarded by certified mail to the last known address furnished by the person for whom service is accepted. Such mailing shall complete the Secretary's responsibility in connection with the substituted service requirement of the Act.

RULES OF PRACTICE

GENERAL

§ 40.201 Commencement of proceeding.

Each administrative proceeding permitted under the Act and these regulations shall be commenced upon receipt of a timely "request for hearing" filed in accordance with §§ 40.113, 40.123, 40.133, or 40.152.

§ 40.202 Designation of record.

(a) Each administrative proceeding instituted under the Act and these regulations shall be identified of record by a number which is preceded by a number identifying the year, followed by the letters FLCRA, and by one or more of the following four designations:

(1) Proceedings involving the "refusal to issue or renew, or to suspend or revoke, a Certificate of Registration or an Employee Identification Card" provided for in §§ 40.111 through 40.113 shall be designated as "R."

(2) Proceedings involving the "assessment of civil money penalties" provided for in §§ 40.121 through 40.124 shall be designated as "P."

(3) Proceedings involving the "denial of facilities and services authorized by the Wagner-Peyser Act" provided for in §§ 40.131 through 40.133 shall be designated as "W."

(b) Proceedings involving a combination of the actions designated in (a)(1) through (a)(3) of this section shall carry each and every such designation as may be appropriate.

(c) The number, letters, and designation assigned to each such proceeding shall be clearly displayed on each pleading, motion, brief, or other formal document filed and docketed of record.

[41 FR 26820, June 29, 1976, as amended at 44 FR 72588, Dec. 14, 1979]

§ 40.203 Caption of proceeding.

(a) Each administrative proceeding instituted under the Act and these regulations shall be captioned in the name of the person requesting such hearing, and shall be styled as follows:

In The Matter of ——————, respondent.

(b) For the purposes of such administrative proceeding the "Secretary of Labor" shall be identified as plaintiff and the person requesting such hearing shall be named as respondent.

REFERRAL FOR HEARING

§ 40.210 Referral to Administrative Law Judge.

(a) Upon timely receipt of a request for a hearing filed pursuant to and in accordance with §§ 40.113, 40.123, 40.133, or 40.152, the Associate Solicitor for Fair Labor Standards, or the Regional Solicitors/Regional Attorneys, by Order of Reference, shall promptly refer an authenticated copy of the notice of administrative determination complained of, and the original or a duplicate copy of the request for hearing signed by the person requesting such hearing or by the authorized representative of such person, to the Chief Administrative Law Judge, for a final determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall be filed of record in the Office of the Chief Administrative Law Judge and shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceeding, subject to any amendment as may be permitted under these regulations.

(b) A copy of the Order of Reference referred to herein, together with a copy of these regulations, shall be served by counsel for the Administrator upon the person requesting the hearing, in the manner provided in § 40.220.

(c) The Chief Administrative Law Judge, upon receipt of the Order of Reference, shall promptly designate an Administrative Law Judge to conduct the proceeding, which shall be in accordance with section 554 of Title 5, United States Code, and the provisions of this part.

[41 FR 26820, June 29, 1976, as amended at 44 FR 72588, Dec. 14, 1979; 47 FR 24702, June 8, 1982]

§ 40.211 Notice of hearing.

The Administrative Law Judge to whom the matter is referred shall, within ten (10) days following such referral, notify the parties by certified mail of a day, time, and place set for hearing thereon or for a prehearing conference to be held as provided in § 40.237, or both. No date earlier than fifteen (15) days after the date of such notice shall be set for such hearing or conference, except by agreement of the parties. Service of such notice shall be made upon the parties as provided in § 40.220.

§ 40.212 Supplemental pleadings.

If upon review of the notice of administrative determination or the request for hearing thereon, it appears to either party that such document, as originally drafted, requires supplementation in order to clarify the issues for a hearing thereon, an amended notice of administrative determination may be filed by the Secretary or an amended response thereto may be filed by respondent, as the case may be. Such supplemental pleading shall be filed with the Chief Administrative Law Judge, with proof of service upon the opposing party, at least ten (10) days prior to the date set for hearing or for a prehearing conference by the Administrative Law Judge before whom the matter is pending, unless the time for filing such document is extended by the judge. If an amended notice of administrative determination is filed by the Secretary, the respondent shall be entitled to file with the Chief Administrative Law Judge an amended response in response within five (5) days after service upon the respondent of such amended notice. No response is required, but if filed, it must be signed either by the person answering or responding or by the representative of such person.

SERVICE OF PLEADINGS AND DOCUMENTS

§ 40.220 Service of documents—manner of service.

(a) *General.* Any pleading, notice, or other document required by this Subpart B to be filed or served on any person shall be filed or served either personally upon such person or by mail to the last known address of such person. If done by certified mail, filing or service is complete upon mailing. If done by regular mail, filing or service is complete upon receipt by addressee.

(b) *Upon parties.* Service of any pleading, notice, or other document by mail upon an applicant for or a holder of a Certificate of Registration or a Farm Labor Contractor Employee Identification Card shall be made at the address designated either on such applicant's or holder's most recent application, or on any subsequent written communication to the Administrator as provided in §§ 40.151 or 40.161.

(1) Service upon any other party to a proceeding under the Act or these regulations of a pleading or document shall also be made by delivering a copy or mailing a copy to the last known address. When any party is represented by an attorney, service shall be made upon the attorney.

(c) *Additional time for service by mail.* Whenever a party to any proceeding under this part has a right or is required to take any action within a prescribed period after the service of a pleading, notice, or other document upon such party, and the pleading, notice, or document is served upon said party by certified mail, five (5) days shall be added to the prescribed period.

§ 40.221 Service upon the Department of Labor—number of copies.

An original and four copies of all pleadings and other documents required for any administrative proceeding provided herein shall be filed with the Department of Labor, the original and a copy thereof to the Chief Administrative Law Judge, a copy to the Administrative Law Judge assigned to the proceeding, a copy of the Associate Solicitor for General Legal Services, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210, and a copy to the attorney representing the Department in the proceeding.

§ 40.222 Proof of service.

The filing of a certificate by the person serving the pleading or other document by personal delivery or by mailing, setting forth the manner of service, shall be proof thereof.

§ 40.223 Computation of time.

(a) Saturdays, Sundays, and Federal legal holidays shall be included in computing the time allowed for filing any pleading, notice, or document under this part, but when the filing time expires on such a day, the period shall be extended to include the next following day which is not a Saturday, Sunday, or a Federal legal holiday.

(b) In computing any period of time prescribed or permitted by this part, the day of the act, event, notice, or default from which the designated period of time begins to run shall not be included.

PROCEDURES BEFORE ADMINISTRATIVE LAW JUDGE, GENERALLY

§ 40.230 Authority of Administrative Law Judge.

(a) *General powers.* In any proceeding under this part, the Administrative Law Judge shall have all powers necessary to the conduct of fair and impartial hearings, including the following:

(1) To administer oaths and affirmations;

(2) To issue subpenas upon proper applications as provided in § 40.234;

(3) To rule upon offers of proof and receive relevant evidence;

(4) To take or cause to be taken depositions and to determine their scope;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel therein;

(6) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) To consider and rule upon procedural requests;

(8) To make and file decisions in conformity with this part;

(9) To take any action authorized by the rules in this part or in conformance with the Administrative Procedure Act;

(10) To exercise, for the purpose of the hearing and in regulating the conduct of the proceeding, such powers vested in the Secretary by Section 7 of the Act as are necessary and appropriate therefor; and

(11) To take any action authorized by the rules of civil procedure for the United States District Court, issued and from time to time amended pursuant to 28 U.S.C. 2072, as deemed necessary and appropriate, unless otherwise proscribed herein.

(b) *Consultation.* The Administrative Law Judge shall not consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate.

(c) *Disqualification.* (1) When an Administrative Law Judge deems himself/herself disqualified to preside in a particular proceeding, such judge shall withdraw therefrom by notice on the record directed to the Chief Administrative Law Judge.

(2) Whenever any party shall deem the Administrative Law Judge for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, that party shall file with the Chief Administrative Law Judge a motion to disqualify and remove such Administrative Law Judge. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. The Chief Administrative Law Judge shall rule upon the motion, and such ruling shall be final.

(3) In the event of disqualification of an Administrative Law Judge as provided in paragraph (c)(1) or (c)(2) of this section, the Chief Administrative Law Judge shall refer the matter to another Administrative Law Judge for further proceedings.

§ 40.231 Appearances; representation of parties.

The Associate Solicitor for General Legal Services and other counsel, as designated, shall represent the Secretary in any proceeding under these regulations. Respondents shall have the right to appear by or with counsel of their choice, who shall qualify for such representation as provided in 5 U.S.C. 500(b). If not represented by counsel, respondents may appear in person or through authorized agents and may submit necessary documents with their own signatures.

§ 40.232 Pleadings allowed.

All matters other than the notice of administrative determination and a request for hearing shall be presented by motion.

§ 40.233 Motions and requests.

Motions or requests shall be in writing, filed with the Chief Administrative Law Judge, and copies served upon the other parties to the proceeding, except that motions or requests made during the course of any hearing or appearance before the Administrative Law Judge shall be filed with such judge or shall be stated orally and made part of the transcript. Each motion or request shall state the particular order, ruling, or action desired, and the grounds therefor. The Administrative Law Judge is authorized to rule upon all motions or requests filed or made prior to the filing of the judge's decision as provided in § 40.262.

§ 40.234 Subpenas.

All applications for subpenas *ad testificandum* and subpenas *duces tecum* shall be made in writing to the Administrative Law Judge. Applications for subpenas *duce tecum* shall specify as exactly as possible the documents to be produced, showing their general relevancy and reasonable scope.

§ 40.235 Witnesses and fees.

(a) The Administrative Law Judge, either at the request of the parties or upon the judge's own motion, may request persons to appear and testify as witnesses, where such action is deemed necessary to serve the purposes of the hearing.

(b) Witnesses subpenaed by any party or by the Administrative Law Judge shall be paid the same fees and mileage as are paid for like services in the District Courts of the United States. The witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

§ 40.236 Depositions.

(a) *When, how, and by whom taken.* For good cause shown, the testimony of any witness may be taken by deposition. Depositions may be taken orally or upon written questions before any person designated by the Administrative Law Judge and having power to administer oaths.

(b) *Application.* Any party desiring to take the deposition of a witness shall make application in writing to the Administrative Law Judge, setting forth the reasons why such deposition should be taken; the time and place it is to be taken; the name and address of the person before whom the deposition is to be taken; the name and address of each witness from whom a deposition is to be taken; and the subject matter concerning which each such witness is expected to testify.

(c) *Notice.* Such notice as the Administrative Law Judge shall order shall be given for the taking of a deposition, but this shall not be less than five (5) days' written notice when the deposition is to be taken within the United States and not less than twenty (20) days' written notice when the deposition is to be taken elsewhere.

(d) *Taking and receiving in evidence.* Each witness testifying upon depsosition shall be sworn, and the adverse party shall have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing; read by or to, and subscribed by the witness; and certified by the person administering the oath. Thereafter, such officer shall seal the deposition, with two copies thereof, in an envelope and mail the same by certified mail to the Administrative Law Judge. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and which would have been valid if the witness were personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present or represented at the taking of the deposition or who had due notice thereof. No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance exist at the time of hearing.

§ 40.237 Prehearing conferences.

(a) Upon motion of either party, or when deemed appropriate by the Administrative Law Judge, the judge may direct the parties or their authorized representatives to meet with the judge for a conference to consider:

(1) Simplification or clarification of the issues;

(2) Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitations;

(3) Stipulations, admissions of fact, and admissions of contents and authenticity of documents;

(4) Limitation of the number of witnesses, including expert witnesses; and

(5) Such other matters as may tend to expedite the disposition of the proceeding.

(b) The Administrative Law Judge shall issue a prehearing order showing the matters disposed of by order and by agreement in such pretrial conferences. The subsequent course of the proceeding shall be controlled by such order.

§ 40.238 Consent findings and order.

(a) *General.* At any time after the commencement of a proceeding under this part, but prior to the reception of evidence in any such proceeding, a party may move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be in the discretion of the Administrative Law Judge, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice of administrative determination (or amended notice, if one is filed), and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their authorized representative or their counsel may:

(1) Submit the proposed agreement for consideration by the Administrative Law Judge; or

(2) Inform the Administrative Law Judge that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed therefor, the Administrative Law Judge, within thirty (30) days thereafter, shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.

HEARINGS

§ 40.251 Hearing procedures generally.

(a) Pursuant to notice given as provided in § 40.211, the designated Administrative Law Judge shall hold such hearings, as provided in this part, as are necessary for determination of the issue or issues submitted for decision, exercising the powers set forth in § 40.230 and conducting the proceeding in accordance with the provisions of 5 U.S.C. 554. In any such hearing, the burden of supporting the Administrator's determination shall be upon the Secretary. Except as may be determined otherwise by the Administrative Law Judge, counsel for the Secretary shall proceed first at the hearing. The hearing shall be open to the public unless otherwise ordered by the Administrative Law Judge.

(b) For good cause shown, the Administrative Law Judge may permit any interested party or person to intervene at a hearing. A petition to intervene shall be in writing and shall state briefly and with particularity the petitioner's relationship to and interest in the matters involved in the proceedings and the nature of the presentation to be made.

(c) If any party to the proceeding, after being properly served with notice of the hearing, should fail to appear at the hearing, the matter may be set for further hearing upon notice to all parties, but a party who is present shall first have an election to present such party's evidence in whole or such portion thereof sufficient to make a *prima facie* case, in which event the Administrative Law Judge may make a decision without further hearing. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Administrative Law Judge's decision.

(d) Contemptuous conduct at any hearing shall be grounds for exclusion from the hearing.

§ 40.252 Evidence at the hearing.

(a) *In general.* The testimony of witnesses shall be upon oath or affirmation administered by the Administrative Law Judge and shall be subject to such cross-examination as may be required for a full and true disclosure of the facts. The Administrative Law Judge shall exclude evidence which is immaterial, irrelevant, or unduly repetitious.

(b) *Objections.* A party who objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. A formal exception to an adverse ruling is not required.

(c) *Failure or refusal of witness to appear or answer.* The failure or refusal of a witness to appear at any hearing or to answer any question which has been ruled to be proper shall be grounds for the action provided in sections 49 and 50 of Title 15, United States Code, pursuant to the provisions of section 7 of the Act, and, in the discretion of the Administrative Law Judge, for striking out all or part of the testimony which may have been given by such witness.

§ 40.253 Official notice.

Official notice may be taken of any material fact, not appearing in evidence in the record, which is among the traditional matters of judicial notice or which concerns matters as to which the Department, by reason of its functions, is presumed to be expert: *Provided,* That the parties shall be given adequate notice, at the hearing or by reference in the Administrative Law Judge's decision of the matters so noticed, and shall be given adequate opportunity to show the contrary.

§ 40.254 Transcripts.

Hearings shall be stenographically reported.

POST-HEARING PROCEDURES

§ 40.261 Proposals by the parties.

At the conclusion of the hearing, the Administrative Law Judge shall afford any party a reasonable opportunity, but not less than fifteen (15) days, upon request, to file with such officer proposed findings of fact, conclusions of law, and a proposed order together with a supporting brief. There may be included statements of the reasons for any such proposed findings of fact, conclusions of law, and the proposed order, including a reference to the portions of the record and to the authorities relied upon in support of each proposal. Such proposals shall be accompanied by a certification that service of the proposals has been made upon all other parties.

§ 40.262 Decision and order of Administrative Law Judge.

(a) The Administrative Law Judge shall prepare, as promptly as practicable after the expiration of the time set for filing proposed findings and related papers provided for in § 40.231, and the judge's decision in the matter shall become the final decision in the administrative process, as provided in the Act. The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue of fact, law, or discretion presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator. The reason or reasons for such order shall be stated in the decision.

(b) The Administrative Law Judge shall transmit to the Chief Administrative Law Judge the entire record including the original of the decision. The Chief Administrative Law Judge shall serve copies of the decision on each of the parties.

(c) The decision when served shall constitute the final order of the Secretary.

(d) Upon service of this decision, the administrative remedies available to the parties have been exhausted.

RECORD

§ 40.271 Retention of official record.

(a) The official record of every completed admiinistrative hearing provided by this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge.

(b) The official record of every completed administrative proceeding provided by this part, other than the record of an administrative hearing, shall be maintained and filed under the custody and control of the Administrator.

§ 40.272 Certification of official record.

(a) Upon timely receipt of either a notice pursuant to section 9(b)(3) of the Act or a petition pursuant to Section 11 of the Act, the Chief Administrative Law Judge shall promptly certify and file with the appropriate United States District Court, full, true, and correct copy of the entire record, including the transcript of proceedings, under the custody and control of the Chief Administrative Law Judge. This shall include the record upon which any penalty may have been imposed or any order complained of which may have been entered.

(b) Upon the timely receipt of a petition under Section 11 of the Act, in any action in which no administrative hearing was held, the Administrator shall file with the appropriate United States District Court a full, true, and correct copy of any transcript of proceedings or record upon which the order complained or was entered.

PART 41—INTERPRETATIONS OF FARM LABOR CONTRACTOR REGISTRATION ACT OF 1963

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AUTHORITY: 78 Stat. 920; 7 U.S.C. 2042, Secretary of Labor's Orders, Nos. 36-64 and 37-64 (30 FR 1139).

SOURCE: 30 FR 2945, Mar. 6, 1965, unless otherwise noted.

INTRODUCTORY

§ 41.1 General statement.

Pursuant to its power to regulate interstate commerce, Congress has enacted the Farm Labor Contractor Registration Act (Pub. L. 88-582, 88th Congress, 78 Stat. 920, effective January 1, 1965), hereinafter referred to as the Act, as a means of removing the impediments, obstructions, and restraints occasioned to the flow of interstate commerce by the activities of certain farm labor contractors for the services of migrant agricultural laborers who exploit producers of agricultural products, migrant agricultural laborers, and the public generally. Interpretations of the Act in this Part 41 are designed to give effect to these announced Congressional policies and are not intended to duplicate the provisions of the regulations (Part 40 of this title) promulgated pursuant to the Act. Accordingly, the discussion in this part should be considered together with the provisions of the Act and of the regulations thereunder.

§ 41.2 Relation to other laws.

The provisions of the various State laws and regulations, applicable to the activities of persons engaged as contractors for the services of agricultural laborers differ from the provisions of the Act. In those situations, where any such legislation and the provisions of this Act both apply, as directed in section 12 of the Act, no provision of this Act will excuse anyone from complying with the appropriate State law and regulations. In like manner, compliance with other applicable State legislation will not excuse anyone for failure to comply with the provisions of this Act.

§ 41.3 "Farm labor contractor" defined.

(a) The term "farm labor contractor" means any person, who, for a fee, either for himself or on behalf of another person, recruits, solicits, hires, furnishes, or transports ten or more migrant workers (excluding members of his immediate family) at any one time in any calendar year for interstate agricultural employment. Such term does not include (1) any nonprofit charitable organization, public or nonprofit private educational institution, or similar organization; (2) any farmer, processor, canner, ginner, packing shed operator, or nurseryman who engages in any such activity for the purpose of supplying migrant workers solely for his own operation; (3) any full-time or regular employee of any entity referred to in paragraph (a) (1) or (2) of this section; or (4) any person who engages in any such activity for the purpose of obtaining migrant workers of any foreign nation for employment in the United States, if the employment of such workers is subject to (i) an agreement between the United States and such foreign nation, or (ii) an arrangement with the government of any foreign nation under which written contracts for the employment of such workers are provided for and the enforcement thereof is provided for in the United States by an instrumentality of such foreign nation.

(b) In general, the farm labor contractor or "crew leader," as he is frequently called, is the middle man in making work arrangements between the migrant workers and the growers for interstate agricultural employment. When these arrangements involve recruiting, soliciting, hiring, furnishing or transporting ten or more migrant workers, excluding members of the contractor's immediate family, at any one time for interstate agricultural employment, the contractor is required to comply with the Act, unless he is otherwise exempt.

(c) The meanings of the terms "person," "fee," "interstate agricultural employment," "migrant worker," and other statutory language, relating to the definition of farm labor contractor, is discussed in the following sections.

§ 41.4 "Person."

Generally, any natural person or business establishment, capable of conducting business, may be a "person" within the definition of this term in section 3(a) of the Act and may include any individual, partnership, association, joint stock company, trust or corporation. However, instrumentalities or agencies of the State or any political subdivision thereof, acting in the capacity of a "farm labor contractor," are not "persons" within the meaning of this section.

§ 41.5 "Fee."

The term "fee" is defined by the Act to include any money or other valuable consideration paid or promised to be paid to a person for services as farm labor contractor. Any money, checks, securities, or property, either personal or real, or other valuable consideration as this term is used for purposes of the law of contracts, paid or promised to be paid, whether as wages, salary, commission or any other method of payment, is a fee when paid to a person for services as a farm labor contractor within the meaning of the term. Money or other valuable consideration accepted as a nonreimbursable advance may also be a fee, as where a grower advances money for repairs or travel expenses to a contractor or where workers pay a contractor in advance for transportation. A promise to pay money or other valuable consideration in the future may also be a fee, as where workers promise to pay a contractor for transportation after the travel is accomplished. Where two or more persons share expenses in a common venture, money or other valuable consideration received by one from the other for this purpose would not be considered a fee. The facts and circumstances of each individual case will be considered in determining whether any valuable consideration paid or promised to be paid constitutes a "fee" within the meaning of the Act.

§ 41.6 "For himself or on behalf of another person."

A farm labor contractor is defined, in part, as any person who, for a fee, for himself or on behalf of another person, recruits, solicits, hires, furnishes, or transports migrant workers for interstate agricultural employment. In view of the phrase, "either for himself or on behalf of another person," it does not matter whether the person is engaging in the activities of a farm labor contractor for his own personal use and benefit or for or on behalf of his employer, contractor, or some other person. Wherever a person is performing the activities of a farm labor contractor, it is immaterial who is or will be the employer or prospective employer of the migrant workers.

§ 41.7 "Recruits, solicits, hires, furnishes, or transports."

These terms are to be given their ordinary meaning as each is defined in the unabridged edition of Webster's New International Dictionary. The Act will apply to any person who engages in or performs one or more of these activities and otherwise meets the definition of a farm labor contractor.

§ 41.8 "Ten or more."

(a) The Act applies to any person who, for a fee, recruits, solicits, hires, furnishes or transports ten or more migrant workers (excluding members of his immediate family) at any one time in any calendar year for interstate agricultural employment. Accordingly, the count of "ten or more" would not include the farm labor contractor himself, whether the contractor be an individual proprietor, a partner of a partnership entity, or one of the principals of a joint venture. Further, in determining the number of workers, the count would include only those individuals who are migrant workers, as hereinafter defined and explained, and would exclude members of the contractor's own immediate family.

(b) The total number of migrant workers to be counted includes all those who are affected by one or more of the following activities, performed or engaged in by a farm labor contractor at any one time, as explained in § 41.9: Recruiting, soliciting, hiring, furnishing, and transporting. Where a contractor performs more than one of these services with relation to a migrant worker, the same worker is not counted more than once. Thus, where a contractor recruits migrant workers and the same workers are hired or transported through the efforts of the same contractor, each worker would be counted only one time for the purpose of arriving at the total number prescribed by the Act. Likewise, if a contractor recruits migrant workers and performs other farm labor contracting services with relation to additional and different workers, all the workers are to be included in the count: *Provided, however,* That the principles, set forth in § 41.9, explaining the meaning of "at any one time," are applied.

§ 41.9 "At any one time."

(a) Within the meaning of the Act, a farm labor contractor performs the described farm labor contracting activities with respect to ten or more migrant workers "at any one time" if, pursuant to a single agreement, arrangement, objective, or purpose and during a single time period reasonably appropriate in length for carrying out such agreement, arrangement, objective, or purpose, the contractor performs one or more of such activities with respect to migrant workers in such number for interstate agricultural employment.

(b) Persons may not escape coverage of the Act by treating every act or transaction as independent or separate from all others, so as, purportedly, to maintain an existing relationship or to contemplate a proposed relationship with less than ten migrant workers "at any one time." Thus, if a person, pursuant to an undertaking, agreement or other obligation solicits, recruits, hires, furnishes or transports migrant workers for interstate agricultural employment for or on behalf of an employer, farmer, other farm labor contractor, or any combination of such, and such performance includes two or more of these activities, simultaneously or successively, the entire operation of the several component activities will be regarded as being performed or engaged in "at any one time": *Provided,* That ten or more migrant workers are affected by the operation. For example, if a person is obligated or has undertaken to hire and transport migrant workers for Farmer A, the fact that three weeks may be consumed to hire the required number of migrant workers would not preclude this activity from being performed "at any one time" with the additional act of transporting, whether the latter act involves the same and/or different workers. While the act of transporting is a single act that is completed when migrant workers are delivered to a prearranged destination, the situation is different for soliciting, recruiting, hiring or furnishing. These activities are such as, usually, to require a series of acts extending over a span of time varying according to the circumstances of the specific situation or assigned task.

(c) Factors to be taken into consideration in determining whether or not a series of farm labor contracting activities will be deemed to have been performed or engaged in "at any one time" should include, among others, (1) the nature of the person's operations, (2) the relationship, if any, between successive individual acts of soliciting, recruiting, hiring, furnishing or transporting migrant workers as part of a chain or connecting sequence of activities for servicing an employer, producer, other farm labor contractor, or any combination of such, (3) the lapse of time between the performance of each of two or more of the activities, and (4) the person's actual or proposed relationship with migrant workers.

(d) Where several activities are performed separately and at different times, and each activity involves less than ten migrant workers, the statutory requirement of ten will not be reached by taking a total of the number included in each activity, unless there is such a continuity or connection between the several activities as to be reasonably regarded as occurring "at any one time." Thus, if a person intends to recruit five (5) migrant workers one day for Farmer A and the next day is requested to recruit and does recruit eight (8) migrant workers for Farmer B, these are separate and independent acts and do not total up to thirteen (13) for purposes of the statutory requirement. However, if he has contracts to hire a total of eighteen (18) migrant workers for Farmers X, Y and Z and he hires this number as a result of three days' effort, the statutory amount of "ten or more" would be present. Also, if the person, under a single arrangement or agreement, recruits, for example, seven (7) migrant workers for Farmer A and, shortly thereafter, also transports eight (8) different migrant workers for the same Farmer A, the result, for purposes of the Act, is more than the statutory total of "ten or more" migrant workers.

(e) The foregoing examples illustrate the manner in which the language "at any one time" may be applied in these specific factual situations. However, the application of these principles to other situations will depend on all the facts.

§ 41.10 "Any calendar year."

(a) A person, engaged in farm labor contracting activities, is covered by the Act, only if he performs those activities with respect to ten or more migrant workers "at any one time in any one calendar year." A certificate of registration, once issued, is effective for the remainder of the calendar year during which it is issued, unless suspended or revoked by the Secretary in accordance with procedures provided in the Act and set forth in Part 40 of this title. A calendar year is measured from the first day of January through the thirty-first day of December, inclusive of the first and last day.

(b) Since registration is required, under the Act, to be renewed for each calendar year, the farm labor contractor's activities, with respect to coverage under the Act, are measured within the limits of the calendar year for which registration is required. In other words, the contractor, whose activities involve ten or more migrant workers at any one time in one calendar year, does not continue to be covered in subsequent calendar years, unless his activities in each subsequent calendar year, independently, are within the scope of the Act.

§ 41.11 "For interstate agricultural employment."

(a) The Act applies to any person who, for a fee, recruits, solicits, hires, furnishes or transports ten or more migrant workers (excluding members of his immediate family) at any one time in any calendar year for interstate agricultural employment.

(b) Where a farm labor contractor intends, expects, or has reason to believe that the workers he recruits, solicits, hires, furnishes or transports will be transported to or employed in another State, his activities with respect to them would be "for interstate agricultural employment." Also, the contractor would be carrying on activities "for interstate agricultural employment," even though at the time he recruits, solicits, hires, furnishes or transports the workers, they are not then engaged in interstate agricultural employment within the definition of that term. Further, the activities of a farm labor contractor are "for interstate agricultural employment," notwithstanding that the contractor or his regular or full-time employee conducts all the farm labor contracting functions entirely within a State, but are calculated to result in migrant workers being transported to or employed in another State.

(c) A farm labor contractor who, either by himself or by or through a full-time or regular employee or by means of any agent, including another farm labor contractor, recruits, solicits, hires, furnishes or transports migrant workers from one State to another is doing so "for interstate agricultural employment," although he is never physically present in the State of origin of the migrant workers.

WHAT CONSTITUTES A MIGRANT WORKER

§ 41.12 General.

(a) A person is engaging in activities as a farm labor contractor for purposes of the Act when he recruits, solicits, hires, furnishes or transports "migrant workers" within the meaning of the Act. A "migrant worker" is defined in section 3(g) as meaning an individual whose primary employment is in agriculture, as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), or who performs agricultural labor, as defined in section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)), on a seasonal or other temporary basis. An individual is a migrant worker irrespective of his primary employment, if he performs agricultural labor on a seasonable or other temporary basis.

(b) "Agriculture" is defined in section 3(f) of the Fair Labor Standards Act of 1938 to include "farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market." A complete discussion of the activities that are included within the scope of this definition will be found in §§ 780.103–780.183 of this title.

(c) An "agricultural commodity" as defined in section 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, section 3; 12 U.S.C. 1141) includes, in addition to other agricultural commodities, crude gum (oleoresin), from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: gum spirits of turpentine, and gum resin, as defined in section 92 of Title 7 (the Naval Stores Act, approved March 3, 1923). See, for a further explanation, § 780.125 of this title.

(d) "Agricultural labor" within the meaning of section 3121(g) of the Internal Revenue Code of 1954 includes all service performed:

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife;

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, section 3; 12 U.S.C. 1141j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4) (A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(B) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar quarter in which such service is performed;

(C) The provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(5) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

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As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for raising of agricultural or horticultural commodities, and orchards.

§ 41.13 "Primary employment."

As used in the definition of "migrant worker," the term "primary employment" is intended to include any person whose chief, principal or main occupation is in "agriculture." If an individual performs agricultural labor, however, on a seasonal or other temporary basis, he is a "migrant worker," as defined in the Act, irrespective of his primary employment.

§ 41.14 "On a seasonal or other temporary basis."

(a) Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, cannot be continuous or carried on throughout the year. A worker who moves from one seasonal activity to another, while employed in agriculture or performing agricultural labor, is employed on a seasonal basis even though he may continue to be employed during a major portion of the year.

(b) A worker is employed on "other temporary basis" where he is employed for a limited time only or his performance is contemplated for a particular piece of work, usually of short duration. Generally, employment, which is contemplated to continue indefinitely, is not temporary.

EXEMPTIONS FROM COVERAGE

§ 41.15 Introductory statement.

The term "farm labor contractor" is defined in section 3(b) of the Act to exclude these four categories of individuals or organizations:

(1) Any nonprofit charitable organization, public or nonprofit private educational institution, or similar organization;

(2) Any farmer, processor, canner, ginner, packing shed operator, or nurseryman who engages in any such activity for the purpose of supplying migrant workers solely for his own operation;

(3) Any full-time or regular employee of any entity referred to in (1) or (2) above; or

(4) Any person who engages in any such activity for the purpose of obtaining migrant workers of any foreign nation for employment in the United States, if the employment of such workers is subject to (A) an agreement between the United States and such foreign nation, or (B) an arrangement with the government of any foreign nation under which written contracts for the employment of such workers are provided for and the enforcement thereof is provided for in the United States by an instrumentality of such foreign nation.

§ 41.16 Nonprofit charitable organizations.

This exemption applies only to "any nonprofit charitable organization, public or nonprofit private educational institution or similar organization": *Provided*, That they are conducted in good faith and are not entered into for the purpose of making a profit or in the belief that a profit can be realized thereon. (Doggett v. Burnet, 1933, 65 F. 2d 191, 194.) It is to be noted that the exemption is available only if the organization is both nonprofit and charitable or is a nonprofit public or private educational institution.

§ 41.17 Farm labor contracting activities solely in connection with certain agricultural operations.

(a) The exemption of section 3(b)(2) of the Act applies to "any farmer, processor, canner, ginner, packing shed operator, or nurseryman" who engages in farm labor contracting activities "for the purpose of supplying migrant workers solely for his own operation." The Act was intended to regulate the practices of all persons functioning in the capacity of middlemen between the farmer, processor, etc., and the migrant worker. Thus, the exclusion applies only in those situations where the normal functions of the middlemen are performed by the farmer, processor, etc., solely for himself and should any of these persons perform in the role of middleman, such as where the activities are in behalf of other employers, producers, processors, etc., in addition to himself, the exclusion would not apply. Generally, the Act will not exclude any farmer's cooperative performing any of the

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farm labor contracting activities in behalf of its members, unless such an association is a farmer, processor, etc., and is employed in contracting activities solely in its own behalf as such.

(b) For example, if a processor solicits, recruits, hires, furnishes or transports migrant workers to be used in the harvesting of crops which he has in fact purchased through a contract with the farmer and under whose contractual terms title to the crops is vested in the processor before the crop has been harvested, the exemption would apply, because the processor would be supplying migrant workers solely for his own operation. Where the processor or any other person acts as the conduit through whom the migrant workers are made available to third parties, even though the crops on which the migrant workers are employed are the subject matter of a contract to purchase (as distinguished from a contract of sale) and will be used in the processing, canning, etc., the exemption does not apply.

§ 41.18 Full-time or regular employees of persons excluded by sections 3(b)(1) or 3(b)(2).

(a) These particular full-time or regular employees are excluded because they constitute no more than the instruments or means by which the organizations or individuals, exempt under sections 3(b) (1) and (2) of the Act, operate. Unless such employee's farm labor contracting activities are performed only for a single employer, such employee may be constituted an independent contractor while performing such activities.

(b) On the basis of long-established common law principles, an independent contractor is a person, other than a servant or employee, who is engaged to perform a designated task and who is responsible to his principal only for the result and not for the means of doing the work contracted for. A determination of whether one employed to render a service does so as an "employee" or as an "independent contractor" cannot be based on isolated factors or upon a single characteristic, but rather upon the circumstances of the whole activity.

(c) Following are some of the factors considered in ascertaining whether an independent contractor relationship exists in a given situation:

(1) The degree of control exercised by the alleged employer;

(2) The extent to which the alleged employer supplies equipment and materials;

(3) The extent to which the alleged independent contractor has established a separate and independent business;

(4) The opportunity for profit or loss by the alleged independent contractor.

(d) A particularly significant factor is the degree or extent to which the alleged employer may intervene to control the means by which the work is to be accomplished.

§ 41.19 International agreements or arrangements.

(a) Also excused from coverage of the Act, under the provision of section 3(b)(4) are those persons who are engaged in farm labor contracting activities for the purpose of obtaining foreign migrant workers for employment in the United States pursuant either to an international agreement or to an international arrangement. All contracts, entered into pursuant to an arrangement with a foreign government for the employment of its nationals in this country, in order to qualify for the exemption under this provision, must be in writing and enforceable in the United States by an instrumentality of such foreign nation.

(b) The agreements or arrangements which presently come within the scope of this exemption are those governing the employment of Mexican nationals, pursuant to the Migrant Labor Agreement of 1951, as amended, the British West Indies, Bahamas, Japanese and Philippine farm workers programs.

REQUIREMENT OF A CERTIFICATE OF REGISTRATION OR FARM LABOR CONTRACTOR IDENTIFICATION CARD

§ 41.20 Kept in person's "immediate possession."

(a) Under section 4(a) of the Act, the farm labor contractor is required to have a valid certificate in his "immediate possession." On the other hand, section 4(b) requires that the farm labor contractor's full-time or regular employee have his farm labor contractor identification card in his "immediate personal possession."

(b) A farm labor contractor who is an individual is required to carry the certificate of registration on his physical person. Other holders need not keep such certificate on their persons, but may keep it in a place immediately accessible to them or under their control. Thus, a corporation, partnership, association, trust or joint stock company may comply by keeping the certificate at its main business office.

(c) As for a holder of an identification card, he must keep it on his physical person.

§ 41.21 Causes for refusal to issue or renew and causes for suspension or revocation of a Certificate of Registration or a Farm Labor Contractor Identification Card.

(a) Section 5(b) of the Act provides that upon

> * * * notice and hearing in accordance with regulations prescribed by him, the Secretary may refuse to issue or to renew, or may suspend or revoke a certificate of registration to any farm labor contractor if he finds that such contractor has, among other things, acted or failed to act as set forth in the following paragraphs (b) through (h):

(b)

> (1) Knowingly has made any misrepresentation or false statements in his application for a certificate of registration or any renewal thereof.

The use of the term "knowingly" in section 5(b)(1) of the Act would indicate that a violation would exist if there is present some fact or circumstance that indicates that the information was given, intentionally and with actual knowledge of its falsity, in bad faith, willfully, or for some fraudulent purpose. Any person who is charged with giving false or misleading information under these circumstances may also be subject to the penal provisions of section 1001, Title 18.

(c)

> (2) Knowingly has given false or misleading information to migrant workers concerning the terms, conditions, or existence of agricultural employment.

It should be noted that under the Byrnes Act, relating to the transportation of strikebreakers (49 Stat. 1899; 18 U.S.C. 1231), whoever knowingly transported in interstate or foreign commerce any person for the purpose of strikebreaking shall be fined not more than $5,000 or imprisoned not more than two years, or both.

(d)

> (3) Has failed, without justification, to perform agreements entered into or arrangements with farm operators; and (4) has failed, without justification, to comply with the terms of any working arrangements he has made with migrant workers.

The term "without justification" in subsections (3) and (4) indicates that a legal wrong has been committed without sufficient lawful reason for acting or failing to act. Such wrongdoing need not have resulted in the institution of court action by the aggrieved party. If the act of commission or omission complained of constitutes a breach of contract under the common law rules of contract or a wrong as embraced by the common law principles pertaining to torts, it may be "without justification." The extent of the harm, injury or loss resulting from such contractual breach or tortious wrong and mitigating circumstances will be considered in determinations of situations concerning subsections (3) and (4) of this section. Normally, "without justification" would not include situations in which the farm labor contractor's failure was directly attributable to acts of God, due to conditions beyond his control or to conditions which he could not reasonably foresee.

(e)

> (6) Has recruited, employed, or utilized the services of a person with knowledge that such person is violating the provisions of the immigration and nationality laws of the United States.

The term "with knowledge" includes not only actual knowledge but also knowledge which may fairly be inferred through notice of certain facts and circumstances which would lead ordinary, careful and vigilant persons to know about a certain condition.

(f)

(7) Has been convicted of any crime under State or Federal law relating to gambling or to the sale, distribution or possession of alcoholic liquors in connection with or incident to his activities as a farm labor contractor; or has been convicted of any crime under State or Federal law involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or prostitution.

Under the definition contained in the regulations, § 40.2(a) of this title, a person has been "convicted" for purposes of section 5(b)(7) of the Act when "a final judgment of guilt has been rendered" against such person by a "court of competent jurisdiction" and "no opportunity for appeal remains." The term includes judgments rendered on pleas of guilty in open court and on pleas of nolo contendere.

(1) A crime "relating to gambling or to the sale, distribution, or possession of alcoholic liquors" must have been in connection with or incidental to the person's activities as a farm labor contractor and may be any one of a variety of offenses, intended to punish an individual or organization for violation of any State or Federal laws regulating certain uses of liquor or certain gaming practices. It should be noted, however, that with the exception of these two offenses, all other crimes enumerated need not have been in connection with or incident to activities as a farm labor contractor.

(2) It is the general policy that convictions which have occurred more than five (5) years prior to the date of the application for a Certificate of Registration or for a Farm Labor Contractor Identification Card would not be constituted a basis for ineligibility for a certificate or identification card, provided that the applicant in each case has demonstrated a record of continuous good behavior during the most recent five-year period.

(3) Where a conviction has been set aside by subsequent judicial process, it no longer constitutes a "conviction" within the meaning of this Act.

(4) A full pardon after conviction also removes the "conviction" as a cause for ineligibility. This position is in accord with the court's language in Knote v. U.S. (1877), 95 U.S. 140 that "in contemplation of law," a full pardon, "so far blots out the offense, that afterwards it cannot be imputed to him to prevent the assertion of legal rights."

(g)

(8) Has failed to comply with rules and regulations promulgated by the Interstate Commerce Commission that are applicable to his activities and operations in interstate commerce.

Legislative history surrounding this particular subsection indicates Congressional intent that this Act implement the enforcement of the Interstate Commerce Commission Regulations (49 CFR Part 198), adopted on January 17, 1957 and promulgated as a result of amendments to sections 203(a) and 204(a) of the Interstate Commerce Act (49 U.S.C. 303(a) and 304(a)). Under section 204(a), the Interstate Commerce Commission is empowered to establish for carriers of migrant workers by motor vehicles reasonable requirements with respect to comfort of passengers, qualifications and maximum hours of service of operators and safety of operation and equipment. Such requirements may be made applicable only in the case of transportation of migrant workers for a total distance of more than 75 miles across State or international boundary lines. In the exercise of the authority, the Commission has promulgated special regulations for carriers of migrant workers in motor vehicles, other than passenger automobiles and station wagons. These regulations prescribe minimum qualifications of drivers and safe driving practices comparable to those applicable to common and contract carriers generally subject to regulation by the Commission. Carriers of less than three migrant workers at any one time are not included within the term "carrier of migrant workers by motor vehicle" as defined in said regulations.

(1) The regulations do establish minimum standards for the comfort of passengers and for parts and accessories necessary for safe operation, hours of service of drivers, and inspection and maintenance. Whenever a vehicle is found to be in a mechanical condition which renders its continued

operation imminently hazardous in the sense that accident or mechanical failure is likely, the vehicle is ordered "out of service" until the necessary repairs are accomplished.

(2) The resulting 1957 regulations, pertaining to the Interstate transportation of migrant workers, therefore, expressly excluded common carriers from their coverage. These are the only regulations referred to in section 5(b)(8) of the Act. Congress did not intend to require a person, engaged solely as a common carrier or contract carrier in the transportation of migrant workers in interstate commerce, to obtain a Certificate of Registration. (See Senate Report No. 202 on S. 524, 88th Congress, 1st Session, dated May 27, 1963, stating as follows: "Common carriers or contract carriers insofar as their activities are subject to the certificate or permit requirements of the Interstate Commerce Act are not intended to be within the purview of this requirement.")

(h)

> (9) Knowingly employs or continues to employ any person to whom subsection (b) of section 4 of this Act applies who has taken any action, except for that listed in paragraph 5 of this subsection, which could be used by the Secretary under this subsection to refuse to issue a certificate of registration.

This language puts the farm labor contractor on notice against employing or continuing to employ a full-time or regular employee where he has knowledge that such employee has committed or has omitted such acts, except for failure to show financial responsibility or maintain prescribed insurance coverage, which would render a person ineligible for a certificate of registration under section 5(b) of the Act.

(i) In veiw of section 4(b) of the Act, providing that the provisions of the Act and regulations prescribed thereunder shall apply to a full-time or regular employee to the same extent as if he were required to obtain a certificate of registration in his own name, the foregoing would be applicable for purposes of refusing to issue or for purposes of revoking or suspending a farm labor contractor identification card.

§ 41.22 Responsibilities of the farm labor contractor and full-time or regular employee.

(a) Under section 6 of the Act, the farm labor contractor assumes the following obligations, among others: (1) To keep on his person the certificate of registration and to exhibit it, prior to dealing, to all persons with whom he may deal as a farm labor contractor; (2) to ascertain and to disclose, to the best of his knowledge and belief, to each worker at the time of his recruitment, the area of employment, the crops and operation on which he may be employed, the transportation, housing and insurance to be provided, the wage rates to be paid and the contractor's charges for his services; (3) to post in a conspicuous place, upon arrival at the employment situs, a statement of working conditions; and (4) to post in a conspicuous place a statement of conditions of occupancy, in the event the contractor either manages, supervises, or otherwise controls the housing facilities.

(b) Where a contractor pays the migrant worker engaged in interstate agricultural employment, either on his own behalf or on behalf of another person, such contractor is required, pursuant to section 6(e) of the Act and with respect to those migrant workers, to provide them with each of the following for each payroll period: (1) All wage data required for computing earnings, either on a time or piece rate basis, whichever is applicable; (2) a statement of all sums paid to the contractor on account of the labor of such migrant worker and sums received on behalf of such migrant worker; and (3) an itemized statement showing all sums withheld by the contractor from the amount he received on account of the labor of such worker and the purposes for which the sums have been withheld.

(c) Sums paid to the contractor, "on account of the labor of such migrant worker," include, but are not limited to, social security payments, wages, production bonus, profit sharing payments, and payments for room, board and transportation, if any. Such sums, however, do not include monies paid to the contractor for services performed independently of his capacity as a farm labor contractor, e.g., as an office worker, as a mechanic, as a supervisor, or in some other type of job.

(d) The language, "including sums received on behalf of such migrant worker," embraces but is not limited to, housing and cafeteria payments where such facilities are supplied by the contractor or some person in his behalf and payment for travel expenses.

(e) The itemized statement, showing all sums withheld by the contractor and the purposes for which such separate sums may be withheld, should include, but is not limited to, such items as social security, withholdings for federal and state income taxes, travel costs, charges for room and board, credit purchases at the employer's commissary and union dues or membership fees.

(f) Failure of the farm labor contractor or his full-time or regular employee to comply with the obligations discussed in paragraphs (a) and (b) of this section and with those cited in § 40.10 of this title may be the basis for refusal to issue or renew or for revocation or suspension of a certificate of registration or a farm labor contractor identification card.

PART 42—COORDINATED ENFORCEMENT

Sec.

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AUTHORITY: 29 U.S.C. 49, et seq.; 29 U.S.C. 201 et seq.; 29 U.S.C. 651, et seq; 29 U.S.C. 801, et seq.; 5 U.S.C. 301.

SOURCE: 45 FR 39489, June 10, 1980, unless otherwise noted.

§ 42.1 General statement.

These regulations are promulgated by the Secretary of Labor to describe the coordination of the activities of the Employment Standards Administration, the Occupational Safety and Health Administration, and the Employment and Training Administration relating to migrant farmworkers.

§ 42.2 Purpose.

(a) These regulations coordinate the activities of ESA, OSHA and ETA, and are intended to:

(1) Ensure effective enforcement efforts under the protective statutes—i.e., the Farm Labor Contractor Registration Act (FLCRA), the Occupational Safety and Health Act (OSHA), and the Fair Labor Standards Act (FLSA) ("protective statutes").

(2) Ensure that the enforcement efforts of DOL agencies are coordinated to maximize their effectiveness, yet minimize unnecessary duplication.

(3) Focus the attention of DOL agencies upon the special employment-related problems faced by migrant farmworkers.

(4) Coordinate DOL enforcement efforts with related activities of farmworker groups, federal and State agencies, and other concerned parties outside the Department of Labor whose operations are related to the employment, housing, and working conditions of migrant farmworkers.

(5) Establish an information exchange which will afford the Department, farmworker groups, and other concerned parties outside the Department of Labor the opportunity to exchange information concerning wages, hours and working conditions.

§ 42.3 National Committee.

A National Farm Labor Coordinated Enforcement Committee ("National Committee") is hereby established which shall be responsible for: Reviewing policies, guidelines and enforcement goals and strategies for the Department of Labor with respect to migrant farm labor-related enforcement efforts under the protective statutes; resolving policies which are in conflict between DOL agencies; advising the Secretary on legislative initiatives which would strengthen farm labor-related enforcement efforts; and providing guidance and recommendations to

DOL agencies on related enforcement activities.

§ 42.4 Structure of the National Committee.

(a) The National Committee shall consist of the Under Secretary of Labor, the Solicitor of Labor, and the Assistant Secretaries for the Employment Standards Administration (ESA), the Occupational Safety and Health Administration (OSHA), and the Employment and Training Administration (ETA).

(b) The Committee shall be headed by the Under Secretary, who shall assign to one of his/her Special Assistants the responsibility of directing the necessary staff work required by the Committee.

(c) The National Committee shall meet on a quarterly basis to review the Department's responsibilities affecting migrant farmworkers, and at any other time as determined by the Under Secretary to be necessary to carry out the National Committee's responsibilities.

(d) There shall be a National Committee staff level working group consisting of senior staff representatives from the Branch of Farm Labor Law Enforcement, the Wage and Hour Division, the U.S. Employment Service (the National MSFW Monitor Advocate), the Employment and Training Administration, the Office of Field Coordination and the Directorate of Federal Compliance and State Programs in the Occupational Safety and Health Administration, and the Office of the Solicitor.

(e) The Special Assistant to the Under Secretary shall be the director of the staff level working group.

(f) The staff level working group shall meet monthly or more frequently as requested by the director.

(g) The director, or another member of the National Committee, shall attend the annual public meeting of each of the Regional Farm Labor Coordinating Committees.

§ 42.5 Policy review.

(a) The National Committee shall review the policies of OSHA, ESA and the United States Employment Service (USES), and the Office of the Solicitor and shall guide the respective agencies in improving the effectiveness of and coordination among all DOL agencies assigned responsibilities related to migrant farmworkers. These policies and guidance shall include such issues as the following:

(1) The coordination of inspections, including housing inspections, reports and procedures of DOL agencies and State agencies designated by the Department to follow-up on complaints under, and to detect promptly violations of, any of the protective statutes.

(2) The expedited enforcement and legal procedures to accommodate the transient and seasonal nature of migrant farmworker's problems.

(3) The development of systems for prompt and efficient referral to the appropriate federal or State agency of violations or complaints discovered by or reported to DOL agencies or appropriate State agencies, along with prompt and efficient follow-up action by the appropriate agency from the initiation of the investigation through final enforcement action.

(4) The training of all appropriate DOL personnel in order to ensure coordinated and effective enforcement.

(5) The level of enforcement achieved by the remedies or sanctions used by DOL agencies to enforce the protective statutes.

(6) The effectiveness of the Specialists Program and the Regional Farm Labor Coordinated Enforcement Committees.

§ 42.6 Enforcement strategy.

(a) Each Regional Farm Labor Coordinated Enforcement Committee shall annually prepare, on a regional basis, a migrant farm labor enforcement strategy for each protective statute pursuant to § 42.20(c)(3). The National Committee shall review these regional strategies and make recommendations to the appropriate DOL agencies. In reviewing the enforcement strategies, the Committee shall pay particular attention to:

(1) The priorities set for the investigation and enforcement activities of compliance officers.

(2) Available data on the past and current levels of enforcement of the

protective statutes in the region, including the data collected pursuant to § 42.21, infra.

(3) The level of attention given to directed activity as distinguished from complaint-initiated compliance activities.

(4) The capability of the agency to respond quickly and thoroughly under the strategy to emergencies involving violations of any of the protective statutes.

(5) The level of priority given by the Office of the Solicitor to farm labor-related enforcement activities under the respective protective statutes.

(6) The ability of agencies to respond quickly and effectively to resolve complaints.

(7) The extent to which agencies follow through with appropriate remedies and sanctions.

(8) The degree to which agencies coordinate and cooperate on a local and regional level.

(9) Other activities of DOL agencies related to migrant farmworker enforcement.

§ 42.7 Complaint/directed action logs.

(a) To facilitate the Committee's review of all migrant farmworker complaints, including pre and post occupancy housing inspections and the enforcement strategies of DOL agencies, the Committee shall oversee the operation of a system of coordinated Complaint/Directed Action Logs ("logs"). The logs shall be maintained by each DOL agency and appropriate SESA and OSHA State agencies.

(b) The logs shall record both the numbers of compliance actions initiated as a result of complaints and those initiated on the basis of directed activity. They shall also include a statistical record of all original referrals both from and to other DOL agencies or federal or State authorities.

(1) Whenever a complaint is received and/or an investigation is completed by an agency, the appropriate official of that agency shall enter the matter on the log.

(2) Wherever possible, the responsible agency, upon request, shall inform the complainant of the status of the actions pending, and shall inform, when applicable, the referring agency.

(3) ESA, OSHA, USES, and the Office of the Solicitor shall be responsible for preparing the quarterly statistical summary by regions of the respective agency's compliance activity. This summary shall include all complaints and compliance actions which (i) were pursued to completion by the subagency during the reporting period or (ii) were received during the reporting period or earlier, and are pending. Each agency also shall report a summary of aging and resource allocation data. The summary shall be submitted to the National Committee and the appropriate Regional Committee.

(c) The National Committee staff shall analyze the statistical summaries and shall recommend National or Regional Committee action where problems or short-comings are identified. Pursuant to this review, the National Committee shall take steps to ensure that the responsible agencies make timely responses to complaints and conduct vigorous enforcement action.

§ 42.8 Coordination plan.

(a) Based upon, among other things, the regional enforcement strategies submitted under § 42.6, the National Committee shall develop an annual coordination plan concerning farm labor-related responsibilities of the Department, including migrant housing inspections, the referral of complaints, enforcement action on violations of federal or State employment-related laws subject to the jurisdiction of DOL, or regulations administered by DOL or appropriate State agencies, and assistance to stranded migrant farmworkers.

(b) The coordination plan shall describe the present program responsibilities of ESA for enforcement in the farm labor area of the Fair Labor Standards Act, and the Farm Labor Contractor Registration Act. The plan shall include a statistical summary of the prior-year complaints under, and alleged violations of, FLSA and FLCRA as recorded in the logs of the ESA Wage and Hour Regional and Area Offices, and shall set forth general goals and objectives for FLSA and FLCRA enforcement activities for the following year as established by ESA.

(c) The coordination plan shall describe the present program responsibilities of OSHA for protecting the safety and health of migrant farmworkers. The plan shall include a statistical summary of prior-year complaints under, and alleged violations of, OSHA recorded in the logs of the OSHA State and area offices, and shall provide general goals for OSHA enforcement activities for the following year as established by OSHA.

(d) The plan shall include a review of the procedures developed by ETA to handle emergency situations, such as the stranding or displacement of migrants, and shall provide general goals for USES activities for the following year.

§ 42.9 Farm Labor Specialist (ESA).

(a) The Assistant Secretary for ESA shall designate ESA Compliance Officers as Farm Labor Specialists ("Specialists"). The Specialists shall be assigned to area offices, or field stations under area offices, with significant numbers of agricultural worker activity as designated by ESA. These Specialists shall coordinate FLCRA and FLSA activities in agricultural employment and shall be responsible for:

(1) Conducting FLCRA/FLSA farm labor investigations;

(2) Serving as staff advisors and consultants to regional and area officials on FLCRA and FLSA;

(3) Coordinating FLCRA and FLSA activities with appropriate OSHA and USES activities;

(4) Directing special migrant farmworker enforcement activities;

(5) Monitoring the farm labor-related activities of significant crew leaders and growers in the area to ascertain that those against whom ESA has taken enforcement action are operating in compliance with FLCRA and FLSA;

(6) Conducting technical assistance and public information programs regarding FLCRA and FLSA;

(7) Coordinating of referrals to and from other federal and State agencies with farm labor responsibilities, such as OSHA and USES;

(8) Advising regularly the Regional Committee on actual farm labor working conditions in their areas and otherwise participating in regional coordination activities as directed by the Regional Committee; and

(9) Providing specialized training on FLCRA and FLSA as may be requried.

§ 42.10 Farm labor contact persons and regional coordinators (OSHA).

(a) OSHA Area Directors shall be responsible for ensuring that: (1) Migrant farmworker complaints and referrals are evaluated, and appropriate action is taken; and (2) migrant farmworker camp inspections are scheduled promptly.

(b) OSHA Area Directors shall designate OSHA compliance officers to serve in the capacity of Farm Labor Contact Persons. These Farm Labor Contact Persons shall be trained in enforcement of the Occupational Safety and Health Act of 1970 (84 Stat. 1590, 29 U.S.C. 651 et seq.) and all OSHA standards affecting migrant farmworkers. These Farm Labor Contact Persons shall be designated in OSHA area offices with responsibility for conducting a significant number of migrant farmworker camp inspections.

(c) The OSHA Area Directors shall assign the Farm Labor Contact Person to:

(1) Conduct migrant farmworker camp inspections during periods when migrant housing facilities are occupied, or when it is reasonably predictable the facilities will imminently be occupied;

(2) Serve as a technical advisor on migrant farmworker-related matters;

(3) Train other compliance officers to conduct migrant farmworker camp inspections; and

(4) Perform other OSHA duties, including duties not related to migrant farmworker OSHA enforcement.

(d) Regional Administrators for OSHA shall designate a Farm Labor Regional Coordinator to coordinate migrant farmworker activities. The Farm Labor Regional Coordinators shall:

(1) Coordinate all migrant farmworker related activity within the Region's jurisdiction, i.e., enforcement, training, and public information;

(2) Serve as representatives of the OSHA Regional Administrators on the

Regional Farm Labor Coordinated Enforcement Committee's staff level work group; and

(3) Perform other OSHA duties.

(e) OSHA shall request State designees of States having approved occupational safety and health plans and responsibility for conducting a significant number of migrant farmworker camp inspections to appoint a State Farm Labor Coordinator. The State Farm Labor Coordinator shall:

(1) Coordinate State OSHA migrant farmworker camp inspections and other migrant farmworker enforcement activities consistent with the objectives of this section; and

(2) Represent the State on the Regional Farm Labor Coordinating Committee's staff level working group.

§ 42.20 Regional Farm Labor Coordinated Enforcement Committee.

(a) Under the leadership of the ESA Regional Administrator, each region shall establish a Regional Farm Labor Coordinated Enforcement Committee ("Regional Committee"), including representatives of ESA, OSHA, ETA (the Regional MSFW Monitor Advocate), and the Office of the Regional Solicitor.

(b) The Regional Committee shall be headed by the Regional Administrator of ESA.

(c) The Regional Committee shall:

(1) Meet regularly on at least a quarterly basis;

(2) Exchange information on enforcement activities, including complaint/directed action logs developed by the DOL subagencies;

(3) Develop a written coordinated enforcement strategy specifying for the region all information which the Regional Committee believes will be helpful to the National Committee in formulating the annual coordination plan. This strategy shall include at a minimum all information called for by § 42.8 for the region, taking into account particular conditions in the region (e.g., the seasonality of the farm labor population). Once it is reviewed by the National Committee and appropriately revised, the regional offices of ESA, ETA, and OSHA shall follow the enforcement strategy for the year, with revisions as needed by changing circumstances during the year. The National Committee shall be advised of any such revisions;

(4) Maintain contacts with State agencies, farm labor groups, growers, and other interested parties; and

(5) Coordinate cross-training of enforcement personnel within the region.

(d) There shall be a regional committee staff level working group in each region consisting of regional staff representatives from ESA, ETA, OSHA, the Office of the Regional Solicitor, and OSHA State Farm Labor Coordinators within that region. This working group shall meet at least monthly.

(e) The designated Farm Labor Specialist (ESA), Farm Labor Regional Coordinators (OSHA), and MSFW Monitor Advocates (USES) in each region shall be available to provide staff support to the Regional Committees.

(f) To facilitate coordination with farm labor groups and growers in each region, the respective Regional Committee shall hold an annual public meeting, transcribe or recorded at the option of the Regional Committee, which shall be:

(1) Publicized to all appropriate migrant farmworker and grower associations in the region;

(2) Conducted by the director of the Regional Committee with other DOL agency representatives participating as necessary; and

(3) Opened to all members of the public.

(g) The Regional Committee shall conduct and cooperate with the National Committee in order to develop, implement and ensure the uniform and effective application of coordinated enforcement efforts.

§ 42.21 Data collection.

(a) For each protective statute, ESA, OSHA, and the Office of the Solicitor ("SOL") shall regularly collect statistical data reflecting their enforcement efforts on a regional and national basis and shall submit such data quarterly to the National and Regional Committees. Fourth quarter data shall be accompanied by annual summaries.

These submissions shall include at least the data items specified in this section. The data collected will provide a basis for coordination of enforcement of the protection statutes.

(b) The statistical data submitted by ESA on FLCRA enforcement shall include: (1) Total compliance actions covered by the Act, showing total farm labor contractor (FLC) actions, total farm labor contractor employee (FLCE) actions, total User actions, total concurrent FLSA actions, and total actions with noncompliance; (2) total types of assignments (JS complaint, other complaint, employers of undocumented workers); (3) total types of compliance actions (conciliation, full investigation, follow-up investigation, other); (4) total compliance hours expended; (5) total crew workers affected; (6) total violations by categories and type of violation (FLC, FLCE, User); (7) total compliance actions in which civil money penalties (CMPs) are assessed and total amount assessed; (8) total compliance actions in which CMPs are collected and total amount collected.

(c) The Wage-Hour Division shall submit the following statistical data on FLSA enforcement with respect to employees working within the categories of Agriculture, Agricultural Products, and Agricultural Services, etc., and various subcategories of each of these three major categories: (1) Total number of completed investigations; (2) total hours spent in conducting investigations; (3) number of employees found underpaid (total, under minimum wage provisions, under overtime provisions); (4) amount of underpayment found (total, under minimum wage provisions, under overtime provisions); (5) total number of employees to whom income was restored; and (6) total amount of money restored.

(d) OSHA's migrant farmworker enforcement statistical data shall be submitted for each region on a state-by-state basis, including OSHA State Plan States, and shall include: (1) Number of complaints received and number of inspections conducted in response; (2) number of referrals received and number of inspections conducted in response; (3) number of programmed or directed inspections, (4) number of violations found by type of violation (serious, willful, repeat and other than serious); (5) total number of employees affected by inspections; (6) approximate total hours spent on migrant camp inspections; (7) number of inspections for which penalties were proposed and amount proposed; (8) number of inspections for which penalties were collected and amount collected.

(e) The SOL shall submit statistical data on farm labor-related enforcement efforts under each protective statute which shall include: (1) Total cases received by SOL; (2) actions taken on cases (settled, referred to ALJ, civil actions filed, referrals to U.S. Attorney); and (3) results of cases (including injunctions and license revocations and denials).

(f) Complaint Response Data—ESA and OSHA shall submit annually a summary of aging data for their respective migrant farmworker-related activities under FLCRA, FLSA and OSHA respectively, showing aging from receipt of a complaint or completion of an investigation until referral to SOL or other final action by the enforcement agency. The Office of the Solicitor shall submit similar data showing aging of matters between receipt by SOL of a case and the completion of some responsive action on the case. Where available, OSHA shall submit data showing the average length of time between receipt of a complaint and the completion of the action taken in response to the complaint. Where available, ESA shall submit data showing complaints received, complaints on hand, and number of actions completed based on complaints.

(g) The National Committee shall review the data collection systems of ESA, OSHA and SOL, as they pertain to farm labor enforcement, and recommend any necessary changes to the subagencies.

PART 56—WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

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AUTHORITY: Secs. 402(a)(7), 402(a)(19), 430-444, and 1102 of the Social Security Act, as amended, 49 Stat. 647 (42 U.S.C. 602(a), 630-644, 1302) unless otherwise noted.

SOURCE: 41 FR 47700, Oct. 29, 1976, unless otherwise noted.

Subpart A—Purpose and Scope and Definitions

§ 56.0 Purpose and scope.

(a) The purpose of this Part 56 is to provide for a Work Incentive Program (WIN) under Title IV of the Social Security Act (Act).

(b) This part contains the policies, rules, and regulations pertaining to the WIN program.

§ 56.1 Definitions.

Act means the Social Security Act.

AFDC (Aid to Families with Dependent Children) means the program authorized by Title IV-A of the Act to provide financial assistance and social services to needy families with dependent children.

AFDC Applicant means a person who applies to the State or local welfare agency for AFDC.

Appraisal means the interview of a WIN registrant by WIN sponsor staff and Separate Administrative Unit (SAU) staff to determine employability potential, to determine the need for supportive services, and to develop an employability plan.

Certification means a written notice from the SAU that necessary supportive services have been arranged or are available to enable a WIN registrant to accept employment, training, manpower services, or other employment-related activities, or that no supportive services are needed and that the individual is at that time ready for employment or training.

Complaints (See grievances)

Component means a structured regularly scheduled program activity for certified registrants such as OJT, WIN PSE, institutional training, and work experience, but not employment-related activities or supportive services.

Deregistration means the removal of an individual from the WIN program.

DHEW means the U.S. Department of Health, Education and Welfare.

DOL means the U.S. Department of Labor.

Employability Plan means a written plan for a WIN registrant that sets forth that individual's occupational goal and the manpower and supportive services necessary for him to reach that goal.

Employment-related activities means activities providing employment and training services to WIN registrants to assist them in locating and securing unsubsidized employment. Employment-related activities include employment search.

Employment search is the part of employment-related activities where registrants are provided with job seeking skills, job development assistance and referrals, and actively contact employers in their effort to secure jobs.

Exempt refers to an AFDC applicant or recipient who is not required by the Act to register for employment, training, or other employment-related activities under the WIN program as a condition of eligibility for AFDC.

Grievance means an adjudicable issue initiated by a WIN registrant which does not involve the threat of sanctions. Grievances may include, but are not limited to disputes over assignments where the registrant is not refusing the assignment, alledged discrimination, and complaints about eligibility for, or amounts of, WIN allowances.

Hearing Officer means the hearing officer designated in the State WIN plan to hear and decide or make recommendations on issues involving WIN.

Income Maintenance Unit (IMU) means the unit of the State or local welfare agency which determines individuals' eligibility for AFDC.

Institutional training means vocational or other classroom training conducted by an instructor in a nonworksite setting.

Local WIN Plan means the plan developed annually by local WIN sponsor and SAU staffs which describes the operation of the WIN program for a specific local area.

Mandatory or nonexempt registrant means an AFDC applicant or recipient who is required by the Act to register for manpower services, training, employment, or other employment-related activities, as a condition of eligibility for AFDC.

Manpower services means employment related and training services provided by the WIN sponsor, designed to improve the work skills of an individual and aid him to find employment.

NCC means the National Coordination Committee, a committee established to administer the WIN program, consisting of the Assistant Secretary for Employment and Training (DOL) and the Administrator of the Social and Rehabilitation Service (DHEW).

NRP means the National Review Panel, the final level of administrative review which is comprised of the DOL Chief Administrative Law Judge and other Administrative Law Judges appointed pursuant to the Administrative Procedure Act's requirements and designated by the Chief Judge to serve as members of that panel.

OJT means on-the-job training, an employment opportunity component in which a certified registrant is hired by a private or public employer and is provided skill training under contract with the employer.

PSE means public service employment, a WIN sponsored component which provides subsidized employment with public or nonprofit private agencies for individuals who cannot be placed in regular unsubsidized employment.

Recipient means an individual who has been determined to be eligible to receive AFDC.

RA means the Regional Administrator, Employment and Training Administration (DOL).

RC means the Regional Commissioner of the Social and Rehabilitation Service (DHEW).

RCC means the Regional Coordination Committee established in each region consisting of the RA and the RC.

Registrant means an AFDC applicant or recipient who has registered with the WIN sponsor for manpower services, training, employment, and other employment-related activities.

Registration means the process whereby an AFDC applicant or recipient completes all necessary registration requirements.

"SAU" means the Separate Administrative Unit, that unit of the single State welfare agency established pursuant to section 402(a)(19)((G) of the Act, to administer the WIN program for that agency.

State Welfare Agency means the welfare agency designated pursuant to 45 CFR 205.100 with authority to administer or supervise the administration of the State plan approved under title IV, A of the Act.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

State Plan means the State plan for AFDC approved under title IV, A of the Act.

State WIN Plan means the Statewide operational plan for WIN, covering AFDC applicants and recipients who register for employment, other employment-related activities, manpower services and training under WIN, developed by the WIN sponsor and SAU in each state and approved and supervised by the RCC under title IV, of the Act.

Supportive services means those social services provided or arranged by the SAU, necessary to enable an individual to engage in employment, other employment-related activities, or training.

Training related expenses means those expenses, reimbursable from WIN funds, that are incurred by individuals participating in WIN program components and activities.

Volunteer means an AFDC applicant or recipient who, though exempt from WIN registration, volunteers for WIN and registers for employment, other employment-related activities, manpower services and training.

Welfare Hearing Officer means the hearing officer designated by the welfare agency to hear and decide or make recommendations on issues relating to exemption or nonexemption for WIN registration.

WIN Incentive Payment means a cash payment of up to $30 per month, paid to an individual who is participating in an institutional or work experience component.

WIN Sponsor means the State agency (such as the State employment service) or other public or non-profit private agency which, through agreement with the RA, admninisters the WIN manpower program under Part C of title IV of the Act at the State or local level.

Work experience training means a clearly defined, well-supervised assignment with a public or nonprofit private employer.

[41 FR 47700, Oct. 29, 1976, as amended at 46 FR 48649, Oct. 2, 1981]

Subpart B—Administration

§ 56.10 General administration provisions.

(a) The WIN program is administered jointly by the Secretary of Labor and the Secretary of Health, Education, and Welfare. To carry out Department of Labor responsibilities under these regulations, the Secretary of Labor has designated the Assistant Secretary for Employment and Training (Assistant Secretary). To carry out

Department of Health, Education, and Welfare responsibilities under these regulations, the Secretary of Health, Education, and Welfare has designated the Administrator of the Social and Rehabilitation Service (Administrator).

(b) The Assistant Secretary and the Administrator together form the WIN National Coordination Committee (NCC) which is responsible for the effective national administration of WIN.

(c) The NCC shall issue a WIN Handbook, establish uniform reporting procedures, establish and clarify policy under these regulations, and establish other requirements for effective administration. NCC issuances shall be binding on all regional, State, and local WIN operations.

(d) The NCC shall designate a national Executive Director to administer the program.

(e) The Assistant Secretary has designated the Assistant Regional Administrator, Employment and Training Administration in each region (RA) to carry out the WIN program in each region. The Administrator has designated the Regional Commissioner (RC) of the Social and Rehabilitation Service to carry out his responsibilities under these regulations in each region.

(f) Within each region the RA and the RC shall form the WIN Regional Coordination Committee (RCC). The RCC shall review and approve all State WIN plans and modifications of such plans covering the States in its region. Consistent with directives of the NCC it shall also establish and clarify policy under these regulations and shall establish other requirements for effective administration.

(g) The RCC shall enter into an agreement with the State WIN sponsor and the State Welfare agency under which they shall be responsible for the overall administration of the State WIN plan.

(h) Within each State the welfare agency's Separate Administrative Unit (SAU) shall be responsible for the provision and arrangement of supportive services. The Income Maintenance Unit (IMU) of each State welfare agency is responsible for determining all questions relating to eligibility for AFDC benefits, including whether an individual is required to register for WIN.

§ 56.11 Annual State WIN plans.

(a) State WIN plans on an annual basis shall be jointly developed and approved by the State WIN sponsor and State welfare agency. The NCC shall issue instructions setting guidelines to the State WIN sponsor and State welfare agency for the development of State WIN plans. The plan shall indicate those areas in which the State WIN sponsor and welfare agency, after considering such factors as size of the welfare case load and budgetary constraints, propose to operate WIN projects. Each State WIN plan shall describe the operation to be carried out by the State WIN sponsor and the State welfare agency as well as a summary of the data in the local WIN plans, as required by paragraph (b) of this section. The State WIN plan shall also provide for the establishment of Labor Market Advisory Councils in accord with section 432(f) of the Act.

(b) Each local WIN sponsor and each local SAU shall jointly develop an annual local WIN plan after consulting with other agencies as appropriate. Such plan shall describe the local project's operation. The NCC will issue instructions setting guidelines for the development of such plans.

(c) Local WIN plans shall be forwarded to the State WIN sponsor and State SAU for consideration in the development of the State WIN plan.

(d)(1) The State WIN sponsor and State welfare agency shall:

(i) Submit the State WIN plan (with local WIN plans attached) to the appropriate RCC for action;

(ii) At the same time, forward copies of the plan to the Governor or his delegated agency (as required by OMB Circular A-95) and to the Governor's State Manpower Services Council established under the Comprehensive Employment and Training Act of 1973 (Pub. L. 93-203), or its equivalent, for review and comment;

(iii) Urge the Governor to involve appropriate area-wide clearinghouses in the review; and

(iv) Request the Governor and the Council to send any comments directly to the RCC, (with copies to the State WIN sponsor and the State welfare agency), within 45 days from the date that copies of the State WIN plan were mailed to them.

(2) RCC shall consider any such comments in reviewing the plan, and shall not take final action on the plan until the Governor's and Council's comments have been received, or until the 45 days referred to in paragraph (d)(1)(iv) of this section have elapsed, whichever is earlier.

§ 56.12 [Reserved]

§ 56.13 State and local agreements for WIN activities and programs.

A WIN sponsor may, through agreements with public or private agencies or organizations, including Indian tribes with respect to Indians on a reservation, carry out such activities and programs as are approved or developed by the Secretary of Labor, including but not limited to public service employment programs, intensive manpower services programs, institutional programs, on-the-job training programs, and work experience programs. Work experience programs and Public Service Employment agreements may be entered into only with public agencies and nonprofit private employers organized for a public purpose.

§ 56.14 Allocation of Federal funds.

(a) The Secretary of Labor shall allocate not less than 50 percent of the sums appropriated under Part C of title IV of the Act to carry out the WIN program among the States in accordance with a formula under which each State receives (from the total available for such allotment) an amount which bears the same ratio to the total amount available as the average number of individuals in each State who, during the month of January last preceding the commencement of such fiscal year, are registered pursuant to section 402(a)(19)(A) of the Act, bears to the average number of individuals in all States who, during that month, are so registered.

(b) The Secretary of Labor shall allocate the balance of the sums not allocated under paragraph (a) of this section in such manner as he determines will best serve the objectives of the program.

(c) Of the sums expended on WIN by the Department of Labor, not less than 33⅓ percent thereof shall be expended for carrying out the programs of on-the-job training and public service employment which meet criteria specified in the WIN Handbook issued under § 56.10.

(d) The Secretary of Health, Education, and Welfare shall prescribe methods for the allocation of funds pursuant to section 403(d) of the Act for the 50 States and the District of Columbia. For Puerto Rico, Guam, and the Virgin Islands, the Secretary of Health, Education, and Welfare shall allocate funds pursuant to section 1108 of the Act.

§ 56.15 Use of Federal funds; political activities.

(a) Federal funds under Part C of title IV of the Act allocated by the Secretary of Labor to the State WIN sponsor, may be used to meet not more than 90 percent of the cost of carrying out the regulations promulgated under this part.

(b) WIN funds under Part C of title IV of the Act may be used for training, supervision, materials, administration, incentive payments, transportation, fees for medical examinations required for the determination of exempt status under § 56.20 or incapacity for work assignment under § 56.34(a)(2), and other items as authorized by the Secretary of Labor, but may not, except in cases of WIN/PSE under the Act, be used for any reimbursement to the employer for time spent by individuals in work.

(c) WIN funds under section 403(d) of the Act may be used to meet 90 percent of the cost of supportive services, including child care, provided by or arranged for by the SAU, for AFDC recipients who are certified to WIN, and SAU administrative costs for all registrants.

(d) Federal funds shall be expended only for costs:

(1) Permitted under the provisions of Subpart 1-15.7 of Title 41 of the Code of Federal Regulations, entitled "Principles for Determining Costs Applicable to Grants and Contracts"; and

(2) Not barred under the provisions of this part.

(e) Pursuant to section 403(c) of the Act, notwithstanding any other provision of this chapter, the Federal share of assistance payments under Title IV-A of the Act for any fiscal year shall be reduced by 1 percentage point for each percentage point by which the number of individuals certified to the WIN sponsor as ready for employment or training under the WIN program falls below 15 percent of the average number of individuals in the State who are required to be registered during such fiscal year.

(f) No funds allocated under the Act shall be used for any partisan or nonpartisan political activity or to further the election or defeat of any candidate for public office; nor shall they be used to provide services, or for the employment or assignment of personnel in a manner supporting or resulting in the identification of programs conducted pursuant to the Act with:

(1) Any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office, or lobbying for any matter at public issue;

(2) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election;

(3) Any voter registration activity.

§ 56.16 Non-Federal contribution.

(a) A State plan under title IV-A of the Act must provide that the State welfare agency will assure a non-federal contribution to the Work Incentive programs established under Part C of the Act by appropriate agencies of the State or private organizations of 10 percent of the total cost of such programs, in cash or in-kind fairly evaluated. For this purpose, the State welfare agency will plan jointly with the State WIN sponsor for the development and use of in-kind resources. The State welfare agency must make the arrangements for, but need not itself make, the contribution. An in-kind contribution may be made in the form of the provision of services, staff, space, equipment, or any other goods or services of value essential to the operation of the WIN program. Where such contribution is in-kind, the amount thereof will be determined on the basis of its reasonable value as established by suitable documentation.

(b) The State welfare agency shall assure a non-Federal cash or in-kind contribution of 10 percent of the cost of supportive services and related administrative expenses incurred by the SAU under Title IV-A of the Act.

(c) The WIN sponsor costs of operation of the WIN program which may be met by the non-federal contribution may include the costs of training, supervision, materials, administration, incentive payments, transportation, and other items as are authorized by the WIN sponsor.

(d) Funds from other Federal sources, whether in cash or in-kind, may not be used for the non-federal share, except when specifically permitted by law. State funds or resources that have been used to match other federal funds also may not be used for this purpose.

(e) If the State welfare agency fails to make arrangements for the non-Federal contribution of 10 percent of the total Statewide program costs of operation, pursuant to paragraph (a) of this section, the Secretary of Health, Education, and Welfare may withhold, under the conditions specified in the law, the equivalent of amounts to be paid from the grants to the State agency for the public assistance titles.

(f) The provisions of Federal Management Circular (FMC) 74-7 must be met.

[41 FR 47700, Oct. 29, 1976, as amended at 46 FR 48649, Oct. 2, 1981]

§ 56.17 Reports, records, financial statements and audits.

(a) State and local WIN sponsors and welfare agencies shall submit periodic reports as required by DOL and

DHEW to assure proper accounting for all program funds, including the non-Federal share. Such records and accounts shall be made available for audit purposes to DOL and DHEW, the Comptroller General of the United States or any authorized representative of these agencies, and shall be retained for 3 years from the date of submission of the final expenditure report or from the date of submission of the annual expenditure report for payments under a grant or contract, whichever is earlier. The records shall be retained beyond the 3-year period if audit findings have not been resolved. State and local WIN sponsors and welfare agencies, shall also submit periodic reports as required by DOL and DHEW covering nonfinancial program activities.

(b) Program fund and activities shall be audited in conformity with the Standards for Audit of Government Organizations, Program Activities and Functions issued by the Comptroller General of the United States.

§ 56.18 Adjustments in payments to WIN sponsors.

(a) If any funds are expended by a WIN sponsor or by a public service employer in violation of the Act, the regulations, grant conditions or contract provisions, the Secretary of Labor may make necessary adjustments in payments to the sponsor or the employing agency on account of such unauthorized expenditures. He may draw back unexpended funds which have been made available in order to assure that they will be used in accordance with the purposes of the Act, or to prevent further unauthorized expenditures, and he may withhold funds otherwise payable under the Act in order to recover any amounts expended for unauthorized purposes in the current or immediately preceding fiscal year.

(b) No action taken by the Secretary of Labor under paragraph (a) of this section shall entitle the WIN sponsor to reduce program activities or allowances for any registrant or to expend less during the effective period of the contract or grant than those sums called for in the State WIN plan. Any such reduction in expenditures may be deemed sufficient cause for termination.

§ 56.19 Termination of contracts or grants.

(a) If a WIN sponsor or IMU violates any provision of the Act or the regulations in this part, or contract provisions or grant conditions which the Secretary of Labor has issued or shall subsequently issue during the period of the contract or grant, the Secretary of Labor may terminate the contract or grant in whole or in part unless the agency which caused the violation corrects it within a period of 30 days after receipt of notice specifying the violation; or

(b) In his discretion, the Secretary of Labor may terminate the contract or grant in whole or in part;

(c) Termination shall be effected by a notice of termination which shall specify the extent of termination and the date upon which such termination becomes effective. Upon receipt of a notice of termination the agency shall:

(1) Discontinue further commitments of contract or grant funds to the extent that they relate to the terminated portion of the contracts or grants;

(2) Promptly cancel all contracts or subcontracts utilizing funds under the contract or grant to the extent that they relate to the terminated portion of the contract or grant;

(3) Settle, with the approval of the Secretary of Labor, all outstanding claims arising from such termination;

(4) Submit, within 6 months after the receipt of the notice of termination, a termination settlement proposal which shall include a final statement of all unreimbursed costs related to the terminated portion of the contract or grant but in the case of terminations under paragraph (a) of this section will not include the cost of preparing a settlement proposal. Allowable cost shall be determined in accordance with the provisions of Part 1-15.7 of Title 41 of the Code of Federal Regulations and Federal Management Circular (FMC) 74-4.

Subpart C—Requirements and Procedures for Registration, for Appraisal and Certification

§ 56.20 Registration requirements for AFDC applicants and recipients; State plan requirements.

A State plan under Title IV-A of the Social Security Act must provide that:

(a) All applicants and recipients who are required to register by section 402(a)(19)(A) of the Act shall register for manpower services, training, employment, and other employment-related activities as a condition of eligibility for AFDC, except as otherwise provided under paragraph (b) of this section;

(b) The Income Maintenance Unit (IMU) of the State or local welfare agency shall determine which AFDC applicants and recipients are exempt from registration and which are required to register as a condition of eligibility for AFDC benefits, based on the following criteria: Each AFDC applicant and recipient shall register unless he is:

(1) Under age 16;

(2) A full-time student (as defined in State welfare regulations), aged 16 but under age 18 who is attending an elementary or secondary school, or a vocational or technical school that is equivalent to a secondary school; or a full-time student under age 19, if the State AFDC plan extends coverage to children under age 19, who is attending a secondary school or a program in a vocational or technical school that is equivalent to a secondary school and is reasonably expected to complete such school or program before reaching age 19;

(3) Ill, when determined by the IMU on the basis of medical evidence or on another sound basis that the illness or injury is serious enough to temporarily prevent entry into employment or training;

(4) Incapacitated, when verified by the IMU that a physical or mental impairment, determined by a physician or licensed or certified psychologist, by itself or in conjunction with age, prevents the individual from engaging in employment or training under WIN;

(5) 65 years of age or older;

(6) Residing outside of a WIN project area specified in the State WIN plan or residing within a WIN project area at a location which is so remote from a WIN office or service unit that effective participation in the program is precluded. The individual shall be considered remote if a round trip of more than 2 hours by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility, would be required less normal round trip commuting time in the area is more than 2 hours, in which case the round trip commuting time shall not exceed the generally accepted community standards;

(7) A person in the home, and the IMU has verified that a physical or mental impairment, as determined by a physician or licensed or certified psychologist, of another member of the household requires the individual's presence in the home on a substantially continuous basis, and that no other appropriate member of the household is available;

(8) A parent or other caretaker relative of a child under age 6 who personally provides full-time care of the child with only very brief and infrequent absences from the child;

(9) A parent or other caretaker of a child who is deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, if another adult relative in the home is registered and has not failed or refused to participate in the program or to accept employment without good cause;

(10) A person who is working not less than 30 hours per week in unsubsidized employment expected to last a minimum of 30 days. This exemption continues to apply if there is a temporary break in full-time employment expected to last no longer than 10 work days.

(11) The parent of a child who is deprived of parental support or care by reason of the unemployment of a parent, if the other parent (who is the principal earner as defined in 45 CFR 233.100(a)) is not exempt under one of the other preceding clauses of this section.

(c) The IMU shall inform each applicant and recipient in writing that:

(1) The needs of any nonexempt applicant or recipient who fails to register as required will not be taken into account in determining the need and the amount of the AFDC assistance payment;

(2) Exempt applicants and recipients must report to the IMU any changes which affect their exempt status;

(3) Any applicant or recipient has a right to a hearing before the State welfare agency to contest a determination of nonexempt status or to contest a denial of AFDC benefits when such benefits have been denied because of his refusal to register for WIN;

(4) Exempt applicants and recipients in WIN project areas may choose to register voluntarily for manpower services, training employment, and employment-related activities, and may withdraw such registration at any time without loss of AFDC benefits, provided their status has not changed in a way which would require registration; and

(5) Nonexempt applicants and recipients, along with exempt individuals who volunteer for WIN, shall report to a specified place of registration at the office of the WIN sponsor or its approved agent.

(d) The IMU shall immediately refer all applicants and recipients, whom it has determined to be nonexempt, and all volunteers, to the WIN sponsor or its approved agent for registration.

(e) The IMU shall refer individuals who have been determined to be exempt from registration on the basis of incapacity to the appropriate State vocational rehabilitation agency.

(f) The IMU of the welfare agency shall include a redetermination of exemption as a part of the AFDC eligibility redetermination process, except where an individual has been determined to be 65 years of age or older, or permanently incapacitated.

(g) The IMU shall notify the WIN sponsor within 3 working days of any welfare determination which may affect an individual's WIN status.

[41 FR 47700, Oct. 29, 1976, as amended at 46 FR 46806, Sept. 22, 1981; 46 FR 48649, Oct. 2, 1981]

§ 56.21 Registration procedures.

(a) The WIN sponsor shall promptly register all individuals found by the IMU to be nonexempt, and all individuals who volunteer for WIN, when they appear at the WIN office so that eligibility determinations are not delayed. Where special conditions warrant (such as a paucity of WIN sponsor offices in an area), the WIN sponsor may, with the concurrence of the RCC, contract with other public or private nonprofit agencies in specified areas to carry out registration activities. Under this requirement, the WIN sponsor (or its approved agency) shall:

(1) Obtain a complete work history on each applicant and recipient;

(2) Notify each registrant about the nature of the WIN program and about his rights and responsibilities therein;

(3) Provide each registrant with written proof of registration;

(4) If the IMU has determined an individual to be nonexempt and the WIN sponsor disagrees, register the individual and request the IMU to reconsider its determination. The IMU's response will be accepted by the WIN sponsor. If the IMU reverses its decision, the WIN sponsor shall deregister the individual as exempt unless the individual volunteers for WIN. If the IMU does not respond within 30 days of the request, the WIN sponsor shall deregister the individual as exempt;

(5) Notify the IMU of any employment or other change of status which may affect an individual's AFDC eligibility or the amount of the AFDC payment. Included in this notification will be the hours and expected duration of employment.

(6) Notify the IMU, within 3 working days of the registration, that registration has been completed so that the IMU's completion of the welfare eligibility determination shall not be delayed; and

(7) Provide all registrants, at the time of registration, job market information and referral to available employment. All appropriate job market information available to the WIN Sponsor, including Job Bank, shall be used to provide this information and facilitate such referrals.

(b) The needs of any individual who fails to register as required under paragraph (a) of this section shall not be taken into account in determining the need of the family and the amount of assistance, and assistance will be furnished to the eligible members of the family;

(c) Where the WIN sponsor is the State public employment service, the registration required of unemployed fathers under section 407(b)(2)(c)(i) of the Act may be completed at the WIN office. This will fulfill the WIN registration requirement under section 402(a)(19)(A) of the Act.

[41 FR 47700, Oct. 29, 1976, as amended at 46 FR 48649, Oct. 2, 1981]

§ 56.22 Appraisal and certification.

(a) The appraisal interview shall be conducted jointly to the extent possible, or sequentially as appropriate, by the WIN sponsor and the SAU. Whenever possible, appraisal shall occur at the time of registration. An employability plan shall be initiated by the WIN sponsor and the SAU at the appraisal interview for each registrant who is found suitable for participation in the WIN program. The decision to refer an individual to employment or to a work or training component rests with the WIN sponsor.

(b) All unemployed parents who are principal earners as defined in 45 CFR 233.100(a) shall be appraised within 2 weeks of the determination of eligibility for AFDC benefits, and appraisal shall occur prior to certification. Certification shall be completed no later than 30 days from the receipt of AFDC benefits.

(c) Other individuals will be appraised according to the following priorities, taking into account the individual's employment potential:

(1) Mothers, whether or not required to register, who volunteer;

(2) Other mothers, and pregnant women under 19 years of age, who are required to register;

(3) Dependent children and relatives who have attained age 16 and who are not in school full-time or engaged in work or manpower training; and

(4) Others.

(d) The employability plan shall contain a manpower services plan and a supportive services plan, and shall be designed to lead to employment and ultimately to self-support. It shall contain a definite employment goal, attainable in the shortest time period consistent with the supportive services needs, project resources, and job market opportunities. Final approval of the employability plan rests with the WIN sponsor.

(e) The SAU shall certify in writing that the necessary immediate and ongoing supportive services have been provided or arranged, or that no such services are required for those individuals who have been selected for participation in a WIN component. The SAU shall also certify registrants who are recipients who are selected to participate in employment-related activities. When certified, the individual shall be placed in employment if appropriate work that the individual can perform is available. If the individual cannot be immediately placed in employment, he shall be placed in employment-related activities, on-the-job training, public service employment, institutional training or in any other manpower program or activity.

(f) The SAU may provide or arrange for social services for AFDC applicants to enable them to participate in employment-related activities. Such applicants may be certified, or services may be provided or arranged on an occasional basis without certification.

(g) Registrants who find employment or are placed by the WIN sponsor may be certified and necessary supportive services may be provided.

(h) AFDC grants and social services for individuals under the State AFDC plan shall not be denied by reason of the individual's referral to a job, to a WIN program, or solely by reason of an individual's participation therein.

[41 FR 47700, Oct. 29, 1976, as amended at 46 FR 46806, Sept. 22, 1981; 46 FR 48650, Oct. 2, 1981]

Subpart D—Supportive and Manpower Services and Protective Provisions

§ 56.30 Supportive services: State plan requirements.

A State plan under Part A of title IV of the Act must provide that:

(a) Within the State agency there will be separate administrative units which will, to the maximum extent possible, perform functions only in connection with the WIN program. To the maximum extent feasible, local SAU staff and WIN employment and training staff should be located together to foster more efficient working arrangements for joint appraisals, the development of employability plans, and the provision of services to registrants.

(b) The SAU shall be responsible for:

(1) Developing, jointly with the State WIN sponsor, and approving, a State WIN plan in accordance with section 433(b) of the Act;

(2) Developing and supplying social services necessary to enable a registrant, to accept employment, training for employment, or other employment-related activities. Necessary services shall continue for a period of 30 days after the start of unsubsidized employment and may continue for a maximum of 90 days at the discretion of the SAU. Such services may be provided even after the AFDC grant has been discontinued due to employment. In an emergency such services may also be provided for a period of up to 30 days to enable a registrant to continue existing employment;

(3) Participating with the WIN sponsor in appraisal and certification, in the development of employability plans pursuant to § 56.22, and in efforts to resolve grievances and disputes informally.

(4) Certifying in writing to the WIN sponsor that the individual is ready for WIN manpower services when the WIN sponsor requests such certification and the supportive services, if any were necessary, have been provided or arranged for; and

(c) Supportive services under the WIN program shall include:

(1) Child care which meets the standards specified in 45 CFR 228.42. When more than one kind of child care is available, the mother of other caretaker relative may choose the type, but may not refuse to accept child care services if they are available. Such services must be responsive to breakdowns in prior arrangements in order to ease or avoid disruption of employment or participation in manpower services;

(2) Family planning services;

(3) Counseling services;

(4) Employment related medical, remedial, and health-related care services not included under the State's Title XIX plan or otherwise available;

(5) Selected vocational rehabilitation services, as defined by the Rehabilitation Act of 1973, which cannot otherwise be funded by the vocational rehabilitation agency;

(d) Other supportive services included in the State WIN plan may be provided if they are necessary to enable registrants to accept employment or receive manpower training.

(e) Supportive services may be provided for up to two weeks to a registrant between participation in WIN components or between participation in a component or employment-related activities and the start of employment in order to avoid interruption of the employability process.

[41 FR 47700, Oct. 29, 1976, as amended at 46 FR 48650, Oct. 2, 1981]

§ 56.31 [Reserved]

§ 56.32 Pay and allowances for WIN registrants.

(a) An individual assigned to employment search shall receive an allowance for necessary expenses for participation.

(b) An individual assigned to a WIN institutional or work experience training component, in which no salary is paid, shall receive an allowance for necessary training related expenses. He shall also receive incentive payments at a rate not to exceed $30 a month provided he meets the requirements of the component relative to hours of participation.

(c) Individuals placed in employment, OJT, or PSE shall be authorized training related expenses for not in excess of two WIN pay periods; or until they receive their first full paycheck or the cash from a grant adjustment reflecting new work related expenses, whichever occurs first.

(d) Reasonable subsistence allowance, in addition to a training-related expense payment, shall be paid to individuals for separate maintenance when in training facilities beyond daily commuting distance from their homes for each calender day within the training payment period during which they are participating in such training and are residing away from home.

(e) An individual shall be paid transportation allowance to a training facility located beyond commuting distance for the cost of his initial trip to the training facility and for his final trip home at the completion or other termination of such training.

(f) Individuals may be paid allowances for nonrecurring expenses as authorized by the Secretary of Labor.

(g) WIN sponsor offices may establish petty cash funds or another acceptable method to meet needs for cash for allowable expenditures for all registrants.

(h) Registrants referred to employment may receive an allowance for necessary expenses.

[46 FR 48650, Oct. 2, 1981]

§ 56.33 Relocation assistance.

The Secretary of Labor may assist certified individuals to relocate their place of residence when he determines such relocation is necessary in order to enable them to become permanently employed and self-supporting. Such assistance shall be given only to individuals who concur in the relocation and who have received a bona fide job offer at their place of relocation at wage rates which will meet at least their full need as determined by the State to which they will be relocated. Assistance under this section shall not exceed the reasonable costs of transportation for such individuals, their dependents, and their household belongings, plus such relocation allowance as the Secretary of Labor determines to be reasonable.

§ 56.34 Appropriate work and training criteria.

(a) WIN registrants may not be referred to employment which is known not to meet the criteria of this paragraph. Certified recipients shall accept assignment to employment, WIN training or employment-related activities, as determined appropriate by the WIN sponsor or face deregistration action. The following standards must be met before any such individuals can be required to accept a work or training assignment including PSE and OJT:

(1) All assignments for those in WIN training shall be within the scope of an individual's employability plan. This plan may be modified to reflect changed employment conditions;

(2) The job or training assignment must be related to the capability of the individual to perform the task on a regular basis. Any claim of adverse effect on physical or mental health shall be based on an adequate medical testimony from a physician or licensed or certified psychologist indicating that participation would impair the individual's physical or mental health;

(3) The total daily commuting time to and from home to the work or training site to which the individual is assigned shall not normally exceed 2 hours, not including the transporting of a child to and from a child care facility, unless a longer commuting distance and time is generally accepted in the community, in which case the round trip commuting time shall not exceed the generally accepted community standards;

(4) When child care is required it must meet the standards specified in 45 CFR 228.42 and must be available during the hours the individual is engaged in a WIN component or manpower activity plus any additional necessary commuting time;

(5) The work or training site to which the individual is assigned must not be in violation of applicable federal, State and local health and safety standards;

(6) Assignments shall not be made which are discrimininatory in terms of age, handicap, sex, race, creed, color, or national origin; and

(7) The individual shall not be referred to work or training unless supportive and manpower services necessary for participation are available, even in cases where the State WIN plan does not specifically provide for the needed services. The cessation or withdrawal of such necessary services while the individual is in a WIN component shall constitute good cause for refusal to participate.

(b) The determination of "appropriate work" shall be made at the local project level. The following criteria shall be applied in addition to the above, in determining "appropriate work":

(1) Appropriate work may be temporary, permanent, full-time, part-time or seasonal work, if such work meets the other work standards of this section;

(2) When an income disregard is available, the wage shall meet or exceed the Federal or State minimum wage law, whichever is applicable, or if such laws are not applicable, the wage shall not be substantially less favorable than the wage normally paid for similar work in that labor market but in no event shall it be less than three-fourths of the minimum wage rate set forth in section 6(a)(1) of the Fair Labor Standards Act;

(3) When, as a result of becoming employed, no income disregard is available to the individual, the wage, less mandatory payroll deductions and a reasonable allowance for necessary employment related expenses, shall provide an income equal to or exceeding the family's AFDC cash benefit. The wage shall in no case, be less than that required by any applicable minimum wage law;

(4) The daily hours of work and the weekly hours of work shall not exceed those customary to the occupation; and

(5) No individual shall be required to accept employment if:

(i) The position offered is vacant due to a strike, lockout, or other bona fide labor dispute;

(ii) The individual would be required to work for an employer contrary to the conditions of his existing membership in the union governing that occupation. However, employment not governed by the rules of a union in which he has membership may be deemed appropriate;

(iii) The job offered would interrupt a program in progress under an approved employability plan leading to self-supported or to the resumption of his regular job within a short period time. This does not, however, preclude temporary employment during the interval prior to his re-employment in his regular job.

(c) In addition to meeting the criteria in paragraph (a) of this section, for training to be appropriate, the quality of the training must meet local employers' requirements so that the individual will be in a competitive position within the local labor market. The training must also be likely to lead to employment which will meet the appropriate work criteria.

[41 FR 47700, Oct. 29, 1976, as amended at 46 FR 48650, Oct. 2, 1981]

§ 56.35 Period of participation.

(a) The duration of institutional training established pursuant to section 432(b)(2) of the Act shall average no more than six months with a maximum duration of one year for any individual.

(b) Participation in the work experience component shall not exceed 13 weeks for any individual.

(c) The RCC may, for good cause, allow an exception to the limitations in paragraph (a) of this section.

§ 56.36 Nondiscrimination.

(a) No person in the United States shall, on the grounds of age, race, creed, color, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance under these regulations.

(b) Grievances involving discrimination under paragraph (a) of this section shall be processed according to equal opportunity provisions established by DOL and DHEW and, to the extent applicable, in compliance with Title VI of the Civil Rights Act of 1964 (78 Stat. 252) and the regulations issued thereunder at 29 CFR Part 31 (DOL) and 45 CFR Part 80 (DHEW).

Subpart E—The WIN Components and Activities

§ 56.40 Public service employment (PSE).

(a) PSE consists of WIN subsidized jobs in the public and private non-profit sectors. All PSE jobs must meet the criteria for appropriate work, established by § 56.34, and must be jobs which would not otherwise be performed by regular employees. The PSE component provides transitional employment intended to move individuals from AFDC into unsubsidized jobs.

(b) All certified registrants for whom appropriate unsubsidized employment cannot be found are eligible for placement in PSE.

(c) An eligible employer may be:

(1) Any unit of State or local government;

(2) Any public agency or institution which is a State or local government subdivision;

(3) An Indian tribe or combination of tribes on a Federal or State reservation; or

(4) Any private non-profit organization established to serve a public purpose.

(d) For the purpose of AFDC benefits, PSE participants are considered to be employed. However, PSE participants shall not be deregistered from WIN until they complete the scheduled PSE contract period and enter unsubsidized employment. PSE participants are not eligible to receive either a WIN incentive payment or the $30 plus ⅓ disregard provided by section 402(a)(8) of the Act.

(e) Individuals shall not be assigned to a PSE job if this will result in the displacement of already employed full-time workers.

§ 56.41 Employment-related activities (EA).

(a) Each State WIN sponsor shall establish a program of employment-related activities in each WIN site to assist registrants, who are either AFDC applicants or recipients, to obtain employment. The State WIN sponsor shall develop standards of participation taking into account local conditions, including, but not limited to, geographic factors, availability of public transportation, and local labor market characteristics. These standards of participation shall be included in the State WIN plan.

(b) Employment-related activities shall provide employment search. Included may be group job seeking, job development, exposure to labor market information, referrals, and job placement, to assist individuals in obtaining unsubsidized employment.

(c) Participation in required employment search may not exceed a total of 40 work days in any calendar year for any individual.

(d) Assignment of registrants to employment-related activities shall occur only after appraisal and the development of an employability plan. Recipients must be certified prior to participation. AFDC applicants may be certified, but lacking certification must be provided any supportive services necessary to permit effective participation.

[46 FR 48650, Oct. 2, 1981]

§ 56.42 On-the-job-training (OJT).

(a) OJT is an employment opportunity which includes training. Under this component, a certified registrant is hired by a private or public employer and provided training which is subsidized under contract between the employer and the WIN sponsor. Employers are encouraged to provide increased supervision and training through contracts with the WIN sponsor, pursuant to which the WIN sponsor will reimburse the employer for the extraordinary costs of such training and supervision.

(b) For the purpose of AFDC benefits, OJT participants are considered to be employed. However, OJT participants shall not be deregistered from WIN until they complete the scheduled OJT contract period as they are still an active participant in the WIN program during such period.

§ 56.43 Institutional and other work experience training.

(a) Institutional training is a component involving vocational or other classroom training conducted by an instructor in a non-worksite setting.

(b) A work experience component is to provide a clearly defined, well-supervised, assignment with a public or private nonprofit employer in which an individual has the opportunity to develop basic work habits, to practice skills learned in classroom training, and to demonstrate skills to a prospective employer.

§ 56.44 WIN individuals suspended to other employment or training programs.

Certified individuals referred to other eligible Federal or State funded employment or training programs, and meeting all the eligibility requirements under those programs, shall be temporarily suspended from the WIN program. Such individuals shall normally be compensated in accordance with and through the provisions of those programs. However, when such compensation is not available or would be disadvantageous to the individual, he may accept regular WIN benefits instead. Notwithstanding such suspension, necessary supportive and manpower services which are not provided under the other program, but which are necessary to permit the individual to continue in the program, will be provided or arranged for by the SAU and the WIN sponsor in accordance with the time limits set forth in this Part.

§ 56.45 Non-Federal employee status.

An individual in a WIN component shall not be deemed an employee of the Federal Government, and shall not be subject to the provisions of laws relating to Federal employees, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

Subpart F—Deregistration and Sanctions

§ 56.50 Deregistration.

(a) All deregistration shall be performed by the WIN sponsor.

(b) A deregistration is necessary when an individual is held to have refused to participate without good cause; an incorrect non-exemption determination has been made; or an individual becomes exempt. Deregistration is also necessary when an individual becomes ineligible for AFDC except in the case where he is participating in a component or is employed and receiving WIN-funded supportive services.

(c) The welfare agency shall notify the WIN sponsor of any change which will affect an AFDC recipient's welfare or exemption status in such a way as to warrant deregistration.

(d) Except in those cases where the WIN sponsor has been notified that an AFDC grant has been discontinued for reasons involving other than WIN program issues the WIN sponsor shall notify the IMU of all deregistrations.

(e) Any WIN recipient, except a volunteer, who is determined to have failed or refused without good cause to appear for appraisal; or any certified WIN recipient, except a volunteer, who has failed or refused to participate in the WIN program without good cause shall be deregistered from WIN and removed from the AFDC grant for failure to participate. Any individual who without good cause terminates or refuses to accept employment, or reduces earnings shall be deregistered and removed from the AFDC grant.

(f) Volunteers who withdraw from the WIN program shall be deregistered.

(g) Volunteers who are found to refuse to participate after notice and an adverse hearing decision, if a hearing is requested, shall be deregistered.

(h) The sanction in 29 CFR 56.51 shall become effective on the first day of the first payment-month that the sanctioned individual's needs are removed from the AFDC grant.

[41 FR 47700, Oct. 29, 1976, as amended at 46 FR 48651, Oct. 2, 1981]

§ 56.51 Sanctions.

A State plan under Title IV-A of the Act shall provide that:

(a) When an AFDC recipient, who is a mandatory registrant in the WIN program, has been found to have failed or refused without good cause to participate in the program, or has terminated employment or refused to accept employment, or reduced earnings without good cause, the following sanctions shall apply:

(1) For the first such occurrence the individual shall be deregistered for three payment-months.

(2) For the second and subsequent occurrences, the individual shall be deregistered for six payment-months.

(b) During the sanction period:

(1) If the individual is a caretaker relative receiving AFDC benefits, the State will not take into account his or her needs in determining the family's need for assistance, but the State will provide assistance in the form of protective or vendor payments or foster care for the remaining members of the assistance unit. When the State makes protective or vendor payments, the nonparticipating caretaker relative may not be the protective payee.

(2) If the individual is the only dependent child in the family, the State will deny assistance for the family.

(3) If the individual is one of several dependent children in the family, the State will deny assistance for the child and will not take into account the child's needs in determining the family's need for assistance.

(c) When the State finds that an AFDC recipient who is a voluntary registrant has failed or refused to participate in the WIN program without good cause, the State will deregister the individual for three or six payment-months depending on whether this was the first or a subsequent deregistration for failure or refusal to participate. However, the individual's AFDC grant shall not be affected.

(d) An individual may manifest failure or refusal to participate in the WIN program or may manifest termination of or refuses to accept employment or reduction in earnings either by an overt act (express) or by a de facto action.

(1) An overt (express) refusal is a written or oral statement by an individual that he or she will not participate in the WIN program.

(2) A de facto refusal is any current act or pattern of behavior consisting of a series of current events from which failure or refusal to participate can be implied. Where the failure or refusal to participate or termination of employment or refusal to accept employment or reduction in earnings is implied, the WIN sponsor shall send a notice setting an appointment for the individual to come to the WIN office and discuss the act or pattern of behavior in question. The notice shall explain the reasons for the appointment and the consequence of failure to keep the appointment.

(e) In the event a registrant is referred back to the IMU as having good cause for not continuing on a training plan or a job, the IMU shall promptly restore the assistance payment to the individual or make other necessary payment adjustments.

[46 FR 48651, Oct. 2, 1981]

Subpart G—The WIN Adjudication System

§ 56.60 Disputes regarding WIN registrations.

(a) The welfare agency shall provide an opportunity for a hearing in the case of a disputed registration determination in which the AFDC applicant or recipient claims that he is exempt from WIN by the statutory criteria. Such an individual shall be considered as exempt until his status is finally determined.

(b) A welfare hearing officer shall conduct welfare hearings under this section, pursuant to the procedures prescribed in 45 CFR 205.10. Where the local WIN sponsor becomes involved in the determination of a disputed registration, a representative of the local WIN sponsor shall appear as a party at the hearing.

§ 56.61 Rules and procedures.

(a) The State WIN plan shall include rules and procedures applicable to both certified and uncertified registrants, governing participation, attendance, conduct, disputes, notice and opportunity for a fair hearing and any State appelate review.

(b) The plan shall specify that the hearing officer shall be an individual who was not involved in the original determination. The plan shall also designate the parties to the hearing.

§ 56.62 Complaints and grievances.

(a) Initially, written complaints and grievances shall be handled informally outside of the WIN adjudication system. They shall be processed at the local project level within the time frame provided under § 56.63(a). At that time, an individual who is not satisfied with the disposition of his complaint may initiate a formal protest at the local project level which then will be processed through the formal WIN adjudication system.

(b) Written records of all disputes arising within the WIN program shall be maintained by the WIN sponsor. The date appearing on such records shall be controlling in determining the timeliness of subsequent steps in the WIN adjudication system.

§ 56.63 Requirement of conciliation and notice.

(a) The WIN staff must exhaust efforts toward conciliatory resolution of disputes between the WIN staff and the registrant before the WIN staff issues a "Notice of Intended Deregistration." This conciliation effort shall begin as soon as possible, but no later than 10 days following the date of failure or refusal to participate as determined under § 56.51(d) of this part, and may continue for a period not to exceed 30 days. However, either the WIN staff, or the regisrant upon written request, *may* terminate this period sooner when either believes that the dispute cannot be resolved by conciliation. The WIN staff shall advise the registrant of the right to terminate the conciliation effort and, where necessary, assist in preparing the written statement.

(b) Within two working days after the WIN staff or the registrant terminates the conciliation period without resolution of the matter, the WIN staff shall mail to the registrant by registered mail a "Notice of Intended Deregistration." This notice must include:

(1) A detailed explanation of the reason for the action and the consequence of refusal or failure to cooperate in a WIN prescribed program without good cause;

(2) Notification of the registrant's right to a hearing if the registrant believes that the proposed action is incorrect, or the length of the sanction period is incorrect, provided a request for a hearing is filed as prescribed in § 56.64 of this part;

(3) Notice that the proposed action will be implementated if a hearing request is not received within the prescribed time;

(4) Instructions and required forms for requesting a hearing;

(5) An offer to assist with preparation of the hearing request;

(6) Notice that he may be represented at the hearing by counsel or other authorized representative appointed by him and that he and his representative will have the opportunity to confront and cross-examine opposing witnesses;

(7) Notice that he will be permitted to present material evidence and testimony at the hearing that is not already in the record.

(c) When written notification is mailed to the individual, the WIN sponsor shall also inform him of the intended action personally or by telephone, if possible.

(d) The requirements of this section do not apply to an individual who:

(1) Has successfully entered employment and is regularly employed;

(2) Is deregistered as exempt; or

(3) Is deregistered as a result of becoming ineligible for welfare.

OMB Control No. 1205-0175. (47 FR 145, Jan. 5, 1982)

[41 FR 47700, Oct. 29, 1976, as amended at 45 FR 27416, Apr. 22, 1980; 46 FR 48651, Oct. 2, 1981; 47 FR 145, Jan. 5, 1981]

§ 56.64 Request for hearing.

(a) An individual who believes the intended action is incorrect may request a hearing before a hearing officer within 10 days after mailing of Notice of Intended Deregistration. The request for a hearing may be made either orally or in writing by the individual or his authorized representative to the WIN sponsor. Where the request is oral, the WIN sponsor shall prepare the required forms on behalf of the individual and obtain the individual's signature on the forms.

(b) Hearing procedures shall be made available to individuals requesting hearings in advance of such hearings.

§ 56.65 Issues subject to hearing.

(a) Under the WIN adjudication system a hearing officer will hear and decide WIN program issues arising subsequent to registration by uncertified and certified registrants. The issues for which a hearing may be requested include, but are not limited to, a registrant's failure or refusal to appear for appraisal or for assignment to a WIN component; unresolved WIN grievances; a registrant's failure or refusal without good cause to accept employment or otherwise participate in the WIN program; and the WIN staff determination of the length of the sanction period.

(b) After reasonable attempts have been made at the local level to resolve disputes arising from work, or training assignment under WIN, the designated activity may be accepted without prejudicing the individual's right to protest such assignment. Such protest shall be handled through the WIN adjudication system in the same manner as if the registrant had, in fact, refused to participate in the WIN program. In such an instance, a registrant who fails to accept an adverse decision pursuant to § 56.68 (a)(5) shall have no further recourse to a hearing on the issue before a hearing officer but may appeal the decision pursuant to § 56.69.

[41 FR 47700, Oct. 29, 1976, as amended at 45 FR 27417, Apr. 22, 1980]

§ 56.66 Hearing procedures.

(a) Upon receipt of a written request for a hearing, a Notice of Scheduled Hearing shall be mailed to the individual and other parties within 10 days. Such notice shall indicate the date, time, and place of the hearing, the issues to be considered, and the hearing procedures that will be followed. Hearings shall be scheduled no earlier than 10 days, or later than 30 days, following the mailing of the hearing notice.

(b) The hearing officer may reschedule a hearing upon request of the individual, his representative, or other party.

(c) An individual or his representative may withdraw the request for a hearing in writing before the hearing.

(d) The WIN staff or its legal representative shall have primary responsibility for presenting the case before the hearing officer.

§ 56.67 Conduct of WIN hearings.

(a) The hearing officer shall:

(1) Regulate the course of the hearing;

(2) Issue subpoenas authorized by State law;

(3) Assure that all relevant issues are considered, including the timeliness of the hearing request;

(4) Rule on the introduction of new and relevant evidence and testimony;

(5) Take any other action consistent with due process, necessary to insure an orderly hearing.

(b) The testimony at the hearing shall be recorded. It shall be transcribed only when necessary for review by an appellate body.

(c) The registrant or his representative, and the designated WIN sponsor and SAU shall be afforded the opportunity to present, examine, and cross-examine witnesses.

(d) The hearing officer may elicit testimony from witnesses, but shall not act as advocate for any party.

(e) The hearing officer shall receive, and make part of the record documentary evidence offered by any party and accepted at the hearing. Copies thereof shall be made available to other interested parties upon request.

(f) The case record, or any portion thereof, shall be available for inspection and copying by any party at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual.

(g) The hearing officer shall, if feasible, resolve the dispute by conciliation at any time prior to the conclusion of the hearing.

§ 56.68 Decisions of the hearing officer.

(a) The hearing officer may rule:

(1) That the individual has failed to appear for appraisal without good

cause or has failed or refused to participate without good cause, and that appropriate deregistration shall be initiated,

(2) That good cause has been shown for failure or refusal to participate and the individual should be retained in the program;

(3) That the request for a hearing is dismissed because:

(i) It was filed untimely without good cause;

(ii) It has been withdrawn in writing;

(iii) The individual failed to appear at the hearing without good cause; or

(iv) Reasonable cause exists to believe that the request has been abandoned or that repeated requests for rescheduling are arbitrary and for the purpose of unduly delaying or avoiding a hearing, in which case the welfare agency may initiate necessary action to impose appropriate sanctions;

(4) That the individual was appropriately or inappropriately assigned; or

(5) That the length of the period during which the registrant failed or refused to participate was not correctly determined by the WIN staff.

(6) Whether following conclusion of the sanction period, the WIN staff correctly refused to reregister the individual for cause.

(b) The hearing officer may render such other decisions as are appropriate to the issue or issues before him or her for resolution. However, a hearing officer must not consider the validity or constitutionality or either the Act or the regulations in this part.

(c) Based on the entire record including any evidence and oral testimony provided at the hearing the hearing officer shall prepare a written decision. Within 10 working days following the hearing, a copy of such decision stating his findings and conclusions of law and the reasons therefore, shall be mailed to the individual and his authorized representative, if any, the WIN sponsor, the SAU, and the RCC. Instructions for appealing an adverse decision or recommendation to the appropriate appellate body shall be attached to the copy sent to the individual and his representative.

(d) In cases involving novel questions of law or policy the hearing officer may, within 5 days after issuing his written decision, certify the case for review and decision to the State WIN appellate body or to the National Review Panel (NRP) where the State does not provide for a State WIN appellate procedure.

[41 FR 47700, Oct. 29, 1976, as amended at 45 FR 27417, Apr. 22, 1980]

§ 56.69 Appeals from hearing officer's decision.

(a) Any party who disagrees with the hearing officer's decision on the WIN issue may request a review of such decision by the appropriate State appellate body within 10 days following the date on which the hearing officer's decision is mailed. A request for appellate review of the hearing officer's decision shall not stay implementation of the decision.

(b) A State WIN appellate body shall consider and decide appeals filed within the time period prescribed by paragraph (a) of this section. Within 30 days after receipt of the request for review it shall prepare a written decision either affirming or reversing the hearing officer's decision or it may remand the case to a hearing officer for further evidence. The decision shall be based on its review of the entire hearing record and any additional written evidence submitted or obtained in connection with its consideration of the appeal. However, in no case shall new evidence be admitted if it brings into question the validity or constitutionality of the regulations in this part or of the Act. The decision shall state the findings of fact and conclusions of law and the reasons therefore. Copies of the decision shall be mailed to the individual, his authorized representative, if any, the WIN sponsor, the SAU the RCC, and the NRP. Instructions for appealing a decision to the NRP and the rules under which the NRP considers appeals shall be attached to the individual's copy of the decision.

(c) While reviewing a case, a State WIN appellate body may consider novel questions of law or policy or certify the case within 5 days after rendering its decision to the NRP for review and decision.

(d) If a hearing officers's adverse decision is reversed on appellate review, the individual shall be paid such retroactive WIN and welfare benefits as may be applicable and, where appropriate, shall be reinstated in the program.

§ 56.70 National Review Panel (NRP).

(a) The NRP shall be composed of the DOL Chief Administrative Law Judge and other Administrative Law Judges appointed pursuant to the Administrative Procedure Act requirements and designated by the Chief Administrative Law Judge to serve as members of the panel. The panel shall be located in Washington, D.C., and shall, unless equity requires otherwise, hold its reviews in Washington.

(b) The NRP has jurisdiction to—

(1) Consider appeals where a State does not provide for a WIN appellate procedure in all cases in which a compelling reason exists, including, but not limited to, cases raising novel and or substantial issues of law or policy.

(2) Consider and decide cases wherein, in the exercise of its discretion, it has accepted certification of the cases to it by the State WIN appellate body, or in the absence of a State WIN appellate body, by the hearing officer because they involve novel questions of law or policy;

(3) Consider and decide cases which, on its own motion, it has requested from a State WIN appellate body or, in the absence of a State WIN appellate body, from the hearing officer.

(4) At its discretion, consider and decide appeals filed by individuals, the WIN sponsor or welfare agencies from State WIN appellate body decisions.

(5) Monitor the consistency, legal sufficiency, and quality of cases handled by the hearing officer and State WIN appellate body.

(6) However, the NRP shall not have jurisdiction to examine the issue of either the validity or constitutionality of the regulations in this Part or of the Act.

§ 56.71 Appeals to the NRP.

(a) Appeals to the NRP may be filed by any party. Such appeals shall be mailed within 10 days of the date of the written decision from which the appeal is taken.

(b) The appeal shall be in writing, shall identify reasons in support of the appeal, and be addressed to the NRP. Notice of the appeal and, where possible copies of the appeal shall be sent by the NRP to all parties.

(c) Any party to the proceeding may respond to the appeal or comment in support of or in opposition to the appeal. The submitting party shall mail its response to the NRP within 10 days after the date of mailing of the notification that an appeal has been filed.

§ 56.72 Request for NRP to accept certification.

(a) The State WIN appellate body, or, in the absence of a State WIN appellate body, the hearing officer may file a request that the NRP accept certification of a case.

(b) The request must contain the following:

(1) A concise statement of the novel question of law or policy which is the basis for the request to accept certification;

(2) A brief summary of the relevant facts and evidence;

(3) Pertinent rulings, conclusions, and decisions by the hearing officer or the WIN appellate body, as the case may be; and

(4) All reasons and arguments in support of the request, including citation of applicable laws and case decision. A copy of any written decisions by the hearing officer or WIN appellate body must be attached to the request.

(c) A request for the NRP to accept certification shall be filed as follows:

(1) By the State WIN appellate body within 5 days following issuance of its written decision.

(2) In the absence of a State WIN appellate body, by the hearing officer within 5 days after issuance of his written decision;

(d) The party filing a request to the NRP to accept certification of a case shall file the request with the NRP, U.S. Department of Labor, Washington, D.C. 20036 and simultaneously mail copies to every other party, including the State agency administering hearings.

(e) Any party who wishes to respond to the request or to comment thereon may file a response with the NRP in support of or in opposition to the request within 10 days following the date of mailing of a request that the NRP accept certification. A copy of the response shall be mailed to all parties to the proceeding, including the State agency administering hearings.

§ 56.73 Requests by NRP for certification.

(a) Requests by NRP for certification of a case to it shall be made in writing no later than 30 days after receipt by the NRP of a written decision by the State WIN appellate body or the hearing officer. Copies of the request shall be mailed to all parties.

(b) In all cases, any party may file briefs in support of its position. The NRP may request briefs from the parties.

(c) Briefs shall be filed within 30 days from the date of mailing of the request that a case be certified. In cases where the NRP requests briefs, a different time limit may be set.

§ 56.74 Certification of the record.

Upon receipt of written notice from the NRP that an appeal has been filed, that it has accepted certification of a case, or that it has requested certification of a case, the State WIN appellate body or the hearing officer, whichever is applicable, within 30 days of mailing of the notification, shall certify and file with the NRP the record of the hearing including the transcript of the hearing; a copy of the hearing officer's decision; where appropriate, a copy of the decision of the State appellate body; and, any other papers and documents relevant to the proceedings. The State WIN appellate body or hearing officer, whichever is appropriate, shall prepare and include an index of the documents transmitted and shall mail a copy of such index to every party.

§ 56.75 Consideration by and decisions of the NRP.

(a) In considering appeals before it, the NRP may sit in panels of three members. The DOL Chief Administrative Law Judge may designate any Administrative Law Judge employed by DOL to submit his findings and recommendation to the NRP or any duly designated review or hear a particular case and to panel thereof.

(b) In considering appeals before it, the NRP, a duly designated panel thereof, or the designated Administrative Law Judge may request the parties to submit additional written statements of position, hear oral arguments or hold additional hearings where necessary.

(c) (1) Any party may make application in writing for a hearing or oral presentation. Such application shall set forth the reasons in support thereof and be made within 10 days after:

(i) Mailing of notification of the filing of an appeal from the decision of a hearing officer where the State does not provide for an appellate body; or

(ii) Mailing of notification that the NRP at its discretion has accepted an appeal from the decision of a State WIN appellate body; or

(iii) Mailing of notification that the NRP has accepted certification of a case whether at its request or upon the application of a State WIN appellate body or hearing officer.

(2) If a hearing or oral argument is directed, the notice shall state the date, time, place, nature, and purpose of the hearing or oral argument. Such notice shall be mailed to all parties.

(3) At any hearing or oral argument so ordered, the NRP, or the designated Administrative Law Judge, may require or direct any party or person to appear to testify or produce evidence. If such hearing or argument is deemed necessary, it shall be held at the location of the original hearing.

(4) Any party to the proceeding may appear personally or be represented by an attorney or agent.

(5) If a hearing is directed before an Administrative Law Judge, the findings and recommendations of the Administrative Law Judge to the panel shall be mailed to all parties. Any party may file with the NRP written exceptions and briefs in support thereof within 10 days of the mailing of the Administrative Law Judge's findings and recommendations and shall at the

same time mail copies of such exceptions and briefs to all other parties. Any exceptions filed shall refer to specific findings and recommendations of the Administrative Law Judge.

(d) In all cases which are accepted for adjudication by the National Review Panel, the NRP shall send a copy of all relevant materials to the NCC Solicitor of Labor and Office of General Counsel, DHEW, to afford a 30-day period for the submittal of any response deemed appropriate or requests for oral argument.

(e) The NRP shall prepare a written decision setting forth its findings, the reasons for its conclusions, and an appropriate order. The decision shall be based on the record and any additional evidence submitted to or obtained by the NRP. The decision may consist of affirmation, reversal, remand for further development of the evidence or other appropriate action. Copies of the NRP decisions including notification that the NRP has denied a request that it review a decision of a State WIN appellate body and notification that NRP has accepted certification of a case, shall be mailed to all parties and such other persons as may be appropriate.

§ 56.76 [Reserved]

§ 56.77 Subsequent WIN registration by deregistered individuals.

(a) An individual who has been deregistered on the basis of a determination that he or she failed or refused to participate without good cause in the WIN program may again register for WIN by making an application. This can be done provided the sanction period specified in § 56.51(c) of this part has elapsed and the individual has given evidence to the WIN staff of willingness to participate in the program.

(b) An individual who has been reaccepted into the WIN program after such deregistration shall have the same rights as an individual who registers for the first time.

(c) Reacceptance into the WIN program may be denied where the termination action was the result of the individual's disruptive behavior or of criminal or other activities which presented a hazard to the staff or others.

[41 FR 47700, Oct. 29, 1976, as amended at 45 FR 27416, Apr. 22, 1980]

PART 70—EXAMINATION AND COPYING OF DEPARTMENT OF LABOR RECORDS

Subpart A—General

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AUTHORITY: (5 U.S.C. 301, 552, as amended by Pub. L. 93-502), 88 Stat. 1561; (29 U.S.C. 9(b)); Reorganization Plan No. 6 of 1950, 34 Stat. 1263 (5 U.S.C. Appendix).

SOURCE: 40 FR 7266, Feb. 19, 1975, unless otherwise noted.

Subpart A—General

INTRODUCTORY

§ 70.1 Purpose and scope of this part.

This part contains the general rules of the Department of Labor providing for public access to information from records of the Department. These regulations implement 5 U.S.C. 552, the Freedom of Information Act, as amended, and the policy of the Department of Labor to disseminate information on matters of interest to the public and to disclose to members of the public on request all information contained in records in its custody insofar as is compatible with the discharge of its responsibilities and consistent with law. This part sets forth generally the categories of records accessible to the public, the types of records subject to prohibitions or restrictions on disclosure, and the places at which and procedure whereby members of the public may obtain access to and inspect and copy information from records in the custody of the Department of Labor. Rules providing for the copying of records made available for inspection and for special services furnished in locating and copying records and fees therefor are set forth in Subpart B. Rules applying the general provisions of this part to requests for disclosure of particular types of records concerned with certain specific programs of the Department are set forth in Subpart C or in the titles and parts of the Code of Federal Regulations referred to in that subpart.

§ 70.2 Definitions.

As used in this part—

(a) The terms "agency," "person," "party," "rule," "rulemaking," "order," and "adjudication" have the meaning attributed to these terms by the definitions in 5 U.S.C. 551, except where the context demonstrates that a different meaning is intended, and except that for purposes of the Freedom of Information Act the term "agency" as defined in 5 U.S.C. 551 includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President) or any independent regulatory agency.

(b) Having "custody" of a Government record means having such charge of it as to be responsible for keeping it available for governmental use as required and protecting, preserving, and exercising such control over it as may be necessary for that purpose. Custody of a record is not synonymous with, and does not require, actual physical possession of the record and a record may be in the custody of an office or officer at a place other than that where the record is located.

(c) The terms "disclosure officer," "responsible officials," and "officer authorized to disclose information from Department records" refer generally to those officials in the Department of Labor to whom requests to inspect or copy record information in their custody may be addressed as provided in § 70.43 and who must pass on such requests as provided in §§ 70.46–70.49. The Solicitor of Labor, in the case of appeals as provided in §§ 70.50–70.52, and with respect to withdrawal of originals as provided in § 70.30, is the disclosure officer for such purposes, as is the Secretary of Labor when he takes action under § 70.30. As the head of the Department, the Secretary may invest any officer or employee of the Department with the authority to disclose information from particular records.

AVAILABILITY OF PUBLISHED INFORMATION

§ 70.5 Information published in the Federal Register.

(a) *General.* In accordance with the provisions of 5 U.S.C. 552(a)(1), basic information concerning the organization, operations, functions, substantive and procedural rules and regulations, officials, office locations, and allocation of responsibilities for functions and programs of the Department of Labor is published in the FEDERAL REGISTER for the guidance of the public. Among other things, such published information describes the central and field organization of the Department and its component units, identifies the persons in charge of its various programs and offices to whom submittals or requests may be made and from whom decisions may be obtained and the places at which they are stationed, outlines generally the course and method by which the various functions of the Department are channeled and determined, and makes plain the nature and requirements of available formal and informal procedures for official action. Indexes to the FEDERAL REGISTER are published in each daily issue and compiled currently on a monthly, quarterly, and annual basis. Copies of the FEDERAL REGISTER and its indexes are available in many libraries, may be examined in reference facilities and offices of the Department of Labor in which reference copies are maintained, and may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. No formal request to examine documents published in the FEDERAL REGISTER is necessary to inspect them at the place where they are kept. Much of the information published in the FEDERAL REGISTER is available in compiled form as stated in paragraphs (b) and (c) of this section.

(b) *Government Organization Manual.* The Government Organization Manual, published annually as a special edition of the FEDERAL REGISTER provides a compact source of information concerning the general and field organization of the Department of Labor, location of Department offices, division of functions among various component units of the Department, and the names and addresses of major officers and those in charge of particular programs or offices. Copies of the Manual may be examined without formal request in any office of the Department of Labor and are available for purchase from the Superintendent of Documents.

(c) *Code of Federal Regulations.* Titles 20, 29, and 41 of the Code of Federal Regulations, which are revised annually, contain a compilation of documents published by the Department of Labor in the FEDERAL REGISTER which set forth substantive and procedural rules and regulations of the Department and statements of general policy or interpretations of general applicability formulated and adopted by the Department. The published rules include descriptions of forms available or the places at which forms and instructions for their use may be obtained, and provide guidance as to the scope and contents of any required papers, reports or examinations. Copies of the pertinent titles of the Code of Federal Regulations are available in many libraries and may be purchased from the Superintendent of Documents. Reference copies maintained in offices of the Department of Labor are available for examination without formal request.

§ 70.6 Information in Department of Labor publications.

Copies of informational material, such as press releases, pamphlets, and other material ordinarily made available to the public without cost as part of a public information program, including reprints of individual parts of the Code of Federal Regulations relating to programs affecting substantial segments of the general public, shall be available upon oral or written request so long as an adequate supply exists. Copies of informational publications of the Department which may be purchased from the Superintendent of Documents may be inspected in those offices of the Department in which reference copies are available. Compliance with the formal procedures provided in this part for obtaining access to Department records is not necessary for access to the foregoing materials.

§ 70.7 Published indexes.

The informational publications available from the Department may include indexes to materials published or contained in its records. Pursuant to the provisions of 5 U.S.C. 552(a)(2) as amended, they will in any event include the current indexes required by the Freedom of Information Act to be maintained and made available for inspecting and copying, except as otherwise provided by published order, as noted below. These indexes provide identifying information for the public as to any matter in the following categories issued, adopted, or promulgated after July 4, 1967: Final opinions and orders made in the adjudication of cases (including concurring and dissenting opinions if any); statements of policy and interpretations adopted but not published in the FEDERAL REGISTER; and administrative staff manuals and instructions to staff that affect a member of the public. As promptly as possible after adoption of this part, such indexes will be made available in published form and offered for sale or otherwise distributed to make them readily available to members of the public. Thereafter, updated indexes or supplements shall be published not less frequently than quarterly to keep the indexes current. In the event that publication of any such index is determined to be unnecessary and impracticable, the order of the agency head so determining shall be published in the FEDERAL REGISTER. Where current indexes of the required matter in the foregoing categories are published commercially and made readily available for public use by the agency no separate publication by the Department will be necessary.

INFORMATION AVAILABLE ON REQUEST

§ 70.11 Policy of disclosure.

(a) *Records made available pursuant to Freedom of Information Act.* Upon the request of any person submitted in accordance with provisions of this part for access to records reasonably described by the requester which are records of the Department of Labor or any of its constituent agencies in the custody of any official of the Department, such records shall be made available as provided in this part for inspection and copying unless specifically exempt from disclosure under the provisions of 5 U.S.C. 552, subsection (b) thereof, and §§ 70.21 through 70.28.

(b) *Records made available notwithstanding exemption from requirements of Freedom of Information Act.* Except in the case of records of which disclosure is prohibited, as described in § 70.21, each officer of the Department authorized to disclose information from Department records under the provisions of this part shall make available for inspection and copying pursuant to the applicable procedures any document from the records in his custody if he determines that, notwithstanding the applicability or possible applicability of an exemption from disclosure, the requested inspection or copying furthers the public interest and does not impede the discharge of any of the functions of the Labor Department. (See § 70.22(b).)

(c) *Implementation of disclosure policy.* To provide for a maximum of availability of Department records under the foregoing policy, the provisions of § 70.29 of this part will be applied where appropriate. Rules to effectuate the application of this policy of disclosure to specific types of information from Department records are set forth in §§ 70.12 through 70.15.

§ 70.12 Records of administrative proceedings.

(a) *Rulemaking proceedings.* All papers and documents made a part of the official record in administrative proceedings conducted by the Department of Labor in connection with the issuance, amendment, or revocation of rules and regulations or determinations having general applicability or legal effect with respect to members of the public or a class thereof shall be made available for public inspection and copying at reasonable times during business hours by the officer responsible for their custody at the place where such records are kept. Arrangements for such inspection may be made in response to oral requests, but a register shall be kept identifying the persons who inspect the records and the times at which they do so. Official records of other rulemaking proceedings shall be made available in accordance with the policies set forth in § 70.11 and the special regulations contained or cited in Subpart C.

(b) *Adjudication proceedings.* All final opinions, including concurring and dissenting opinions, as well as orders, made in the administrative adjudication of cases, shall be made available for inspection and copying upon request pursuant to the provisions in this part. Except where an exemption provided by 5 U.S.C. 552 must be asserted in the public interest to prevent a clearly unwarranted invasion of personal privacy or violation of law or to ensure the proper discharge of functions of the Department of Labor, all papers and documents made a part of the official record in adjudication proceedings conducted by the Department shall be made available for public inspection and copying on request as provided in this part or in specific regulations pertinent to such adjudications as referred to in Subpart C.

§ 70.13 Evaluation reports on external programs.

Except in the case of records of which disclosure is prohibited, as described in § 70.21, each officer of the Department authorized to disclose information from Department records under the provisions of this part shall make available for inspection and copying promptly after receipt thereof, any document or part thereof containing a final evaluation by an independent contractor of any external program or activity carried out by the Department of Labor, upon written request submitted as provided in this part.

§ 70.14 Policy statements and interpretations.

Statements of policy and interpretations affecting a member of the public which have been adopted by the Department of Labor or a constituent agency thereof in connection with the administration of any program of the Department and which have not been published in the FEDERAL REGISTER shall be made available for public inspection and copying in accordance with the policy set forth in § 70.11 and the provisions and procedures in this part. The policies and interpretations made available pursuant to this section shall include any policy or interpretation concerning a particular fact situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation. If the statement of policy or interpretation sought is contained in an available publication of the Department of Labor or has been placed in the public domain by release to private publishers of Government information services, it will be made available for examination in the form in which it was published or released without any formal request, at any office of the Department in which a copy or copies are kept.

§ 70.15 Staff manuals and instructions.

Any administrative staff manual or instruction to staff issued by the Department of Labor or a constituent agency thereof in connection with the administration of any program of the Department, containing matter (such as statutory interpretations) affecting a member of the public shall be made available for public inspection and copying in accordance with the policy set forth in § 70.11 and the provisions and procedures in this part. These are the manuals and instructions to staff or portions thereof which delineate the basis for administrative action affecting members of the public, and are to be distinguished from manuals, portions thereof, or instructions provided for the guidance of Government personnel engaged in such law enforcement activities as investigating, inspecting, or auditing to determine whether violations of law exist, or prosecuting law violations in courts or administrative tribunals. The criteria or guidelines for staff engaged in such procedures, with respect to such matters as the selection, handling, defense, prosecution, or settlement of cases, operational tactics, allowable tolerances, investigation or litigation techniques and strategy, are traditionally and necessarily of a confidential nature, as is recognized in the legislative history of the Freedom of Information Act, and are subject to protection under the provisions of 5 U.S.C. 552(b), which restrict the disclosure requirements by the exemptions explained in the following sections of this part. Any special provisions for access to administrative staff manuals and instructions applicable to specific programs may be ascertained by reference to Subpart C.

§ 70.16 Indexes to certain records.

(a) Current indexes identifying final opinions and orders in adjudicated cases (see § 70.12(b)), statements of policy and interpretations adopted by the agency but not published in the FEDERAL REGISTER (see § 70.14), and administrative staff manuals and instructions (see § 70.15), which have been issued, adopted, or promulgated after July 4, 1967, are normally available to the public in published form as provided in § 70.7. Such indexes, whether or not published, are made available for inspection and copying on request. If published copies of a particular index are at any time not available or if publication of such index has been determined to be unnecessary and impracticable by order published in the FEDERAL REGISTER, copies thereof will be furnished on request upon payment of the direct cost of duplication as provided in § 70.62(d).

(b) To effectuate the provisions of 5 U.S.C. 552(a)(2), § 70.7 of this part and paragraph (a) of this section, each officer identified in § 70.35 and § 70.36 shall maintain, make available for public inspection and copying, and provide for the required publication of current indexes of all materials in his custody which are subject to the indexing and publication requirements of 5 U.S.C. 552(a)(2). Each such officer shall forward a copy of each page of his index, including information as to pages which have become obsolete, to the Office of Information, Publications, and Reports in the Main Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20210, which shall provide a central repository for, and make available for public inspection, all such indexes and supplements thereto compiled by such officers, and shall provide for distribution of the published indexes and supplements.

RESTRICTIONS ON DISCLOSURE

§ 70.21 Records not disclosable.

(a) Pursuant to the provisions of 18 U.S.C. 1905, every officer and employee of the Department of Labor is prohibited from publishing, divulging, disclosing, or making known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with the Department or any agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association. No officer or employee of the Department of Labor shall disclose records in violation of this provision of law.

(b) No records of the Department of Labor with respect to matters specifically required by statute to be kept secret shall be made available for inspection or copying under the provisions of this part. By virtue of the exclusionary language in 5 U.S.C. 552(b)(3) the disclosure requirements of the Freedom of Information Act do not apply to or authorize the disclosure of records with respect to any matters specifically exempted from disclosure by statute.

(c) No records of the Department of Labor with respect to matters specifically authorized under criteria established by Executive order to be kept secret in the interest of the national defense or foreign policy and properly classified pursuant to such order shall be made available for inspection or copying under the provisions of this part. Records concerning such matters are expressly excluded from the application of the disclosure requirements of the Freedom of Information Act by the provisions of 5 U.S.C. 552(b)(1).

§ 70.22 Records disclosure of which may be refused.

(a) *Records exempt from statutory disclosure requirements.* The Freedom of Information Act, as codified in 5 U.S.C. 552, lists nine categories of records (in 5 U.S.C. 552(b)) to which the disclosure requirements of the statute do not apply. The first and third of these relate to the records described in § 70.21 which are not disclosable because protected from disclosure by the express provisions of a statute or a secret classification authorized by Executive order in the interest of national defense or foreign policy. The other seven categories of records excluded from the statutory disclosure requirements are set forth in §§ 70.23 through 70.28, inclusive. Information from records in these seven categories may, however, be made available for inspection and copying as provided in paragraph (b) of this section.

(b) *Disclosure of protected records; conditions precedent.* Although the Department of Labor is not required by the Freedom of Information Act to make available for inspection or copying any materials or documents included in its records which are within the categories described in 5 U.S.C. 552(b)(2), (4), (5), (6), (7), (8), or (9) (see §§ 70.23–70.28), under the Department's disclosure policy set forth in § 70.11 particular records requested which come within these categories, or portions thereof, shall nevertheless be made available to the extent, but only to the extent, that the appropriate officer authorized to disclose information from Department records determines that the disclosure will further the public interest and will not impede the discharge of any of the functions of the Department of Labor. Such a determination shall be made with due regard not only to the public interest in accessibility to the people of information regarding operations of their Government but also to the public interest in protecting citizens from impairment of their rights to privacy or from harassment, injury, or the dissemination of information concerning them which is privileged or has been submitted by them to the Government on a confidential basis. In determining whether access to such records will be permitted, due consideration shall also be given to the public interest in preventing disclosure of information which would handicap, obstruct, or jeopardize effective performance of the Department's functions under statutes or Executive orders, including its duties with respect to law enforcement.

§ 70.23 Internal rules and practices.

(a) Pursuant to exemption (2) set forth in 5 U.S.C. 552(b), and as provided in § 70.22, the disclosure from Department of Labor records of matters that are related solely to the internal personnel rules and internal practices of the Department may be refused. The records protected by this exemption include memoranda pertaining to personnel matters such as staffing policies and policies and procedures for the hiring, training, promotion, demotion, and discharge of employees. Also included are records concerning operating rules, practices, guidelines, and procedures for departmental investigators, inspectors, compliance officers, examiners, and attorneys, the release of which would substantially impair the effective performance of their duties.

(b) The purposes of exemption (2) include the protection from public disclosure of any record that is designed only for the guidance of Department personnel, including internal rules and practices that cannot be disclosed to the public without substantial prejudice to the effective performance of a significant Department function. A negotiator cannot bargain effectively if his instructions and limitations are known to the person with whom he is negotiating. Similarly, the effectiveness of an authorized but unannounced inspection or audit would be destroyed if the circumstances under which that inspection or audit is to be held become public knowledge.

(c) Although access to particular records concerning matters within the purview of exemption (2) may be permitted as provided in § 70.22 if the officer authorized to disclose records determines that the disclosure would serve the public interest and not impede the discharge of any function of the Department, such a determination ordinarily cannot be made in the case of internal rules and instructions relating to investigations and enforcement activities concerned with questions of compliance with or violations of provisions of law.

§ 70.24 Trade secrets and privileged or confidential information.

(a) Pursuant to exemption (4) set forth in 5 U.S.C. 552(b), and as provided in § 70.22, the disclosure from Department of Labor records of matters that are trade secrets, and of commercial and financial information obtained from a person and privileged or confidential, may be refused. Legal requirements of secrecy and prohibitions of disclosure may apply to such records as set forth in § 70.21. Disclosure shall be refused where these mandatory restrictions apply to the records sought. Even where denial of access is not required by these restrictions, access to records exempted from the disclosure requirements by exemption (4) cannot be granted under the policy expressed in §§ 70.11 and 70.22 unless the disclosure officer, in balancing the right of the public to know how the Government operates against the need of the Government to keep information in confidence and the right of the person from whom it was obtained to have privileges and confidences respected, is able to determine that disclosure will serve the public interest and not impede the discharge of any function of the Department of Labor.

(b) The intent of the exemption set forth in paragraph (a) of this section to protect privileged or confidential information is, according to the committee reports in both Houses of Congress, not restricted to the trade secrets and commercial or financial information specifically mentioned in the statute. Information the disclosure of which may be refused pursuant to this exemption is, according to the legislative history, intended to include information customarily subject to a doctor-patient, lawyer-client, or other such privilege.

(c) Information "obtained from any person" would include information obtained from a person inside as well as outside the Government. The applicability of this exemption does not depend on whether the record contains information obtained from the public at large, from a particular person, from within the Department, or from another agency. While information which is confidential in the hands of one agency retains its protected character in the hands of agencies to which it is subsequently furnished, the exemption does not sanction the rendering of documents confidential by the expedient of transferring them among agencies.

(d) Except as otherwise provided in this part (e.g., § 70.13), disclosure in certain circumstances may be refused of material such as formulae, designs, drawings, research data, and the like, which are significant not as records but as items of valuable property. These may have been developed by or for the Government for its use and at its expense. Nothing in the legislative history suggests that the Freedom of Information Act was intended to give away such valuable property to any person willing to pay the price of making a copy. Where similar property in private hands would be held in confidence, the public interest would appear to require that such property in the hands of an agency should be protected under exemption (4).

(e) This exemption is further intended to extend protection to other information in Government records which has been furnished and accepted in confidence and which would not customarily be released to the public by the person from whom the Government obtained it. See, for example, the House Report (H. Rept. 1497, 89th Cong., 2d Sess.) and the President's signing statement. Accordingly, the exemption assures the confidentiality of information thus obtained by the Department of Labor through questionnaires and required reports to the extent that the information would not customarily be made public by the person from whom it was obtained. Nothing in the Freedom of Information Act necessitates a disregard of the right of individuals or groups to rely in good faith on an understanding of confidentiality for which a Government agency has reasonably afforded a basis. Maintenance of citizens' respect for governmental fairness requires that such understandings be given due consideration. At the same time, Department representatives should be alert to discourage the development of such understandings where not clearly warranted by departmental responsibilities.

(f) Pursuant to exemption (8) set forth in 5 U.S.C. 552(b), and as provided in § 70.22, the disclosure from Department of Labor records of any matter contained in, or related to, examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, may be refused. Exemption (8) emphasizes the application to financial institutions of the protection from disclosure afforded by the exemption set forth in paragraph (a) of this section, and makes plain the intent to protect information relating to such institutions which may be prepared for or used by any agency responsible for the regulation or supervision of such institutions. Access to any such information in records of the Labor Department will be refused where disclosure is not legally permitted or where a determination to disclose is inappropriate for reasons discussed in paragraph (a) of this section. In cases where another agency is concerned with information protected by exemption (8) in 5 U.S.C. 552(b) which is sought from records of the Department, the provisions of § 70.31 are also applicable.

§ 70.25 Inter-agency and intra-agency memoranda and letters.

(a) Pursuant to exemption (5) set forth in 5 U.S.C. 552(b), and as provided in § 70.22, the disclosure from Department of Labor records of matters in inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than the agency in litigation with the agency may be refused. The exemption is intended essentially to protect the full and frank exchange in writing of ideas, views, and opinions necessary for the effective functioning of the Government and the making of informed decisions by its officers.

(b) The protection from disclosure afforded by exemption (5) to the internal records of the Government described in paragraph (a) of this section is limited to those communications which, in litigation with a Government agency, would not be routinely available by law to another party to the proceeding. The legislative history and decisions of the courts make it clear that this provision is intended to insure that memoranda or letters not protected from disclosure by some other exemption would be available to the general public for inspection and copying if they "would routinely be disclosed" to such a party "through the discovery process" in such litigation. (See H. Rept. 1497, 89th Cong., 2d Sess.) The internal memoranda and letters protected from disclosure by exemption (5) are accordingly those which would not be released as a matter of course in litigation where discovery is sought by a party other than the agency under the Federal Rules of Civil Procedure. Since the granting of discovery of internal documents is typically a very extraordinary step, not normally a "routine" one, it is only in a limited category of situations that such documents would be routinely available by law to another party in litigation with the agency.

(c) Examples of the type of record information protected from disclosure by the exemption set forth in paragraph (a) of this section include opinions, advice, deliberations, or recommendations made in the course of developing official action by the Department of Labor or any of its component units, and other internal communications which would not be routinely available through the discovery process to a party in litigation with the Government.

(d) In the case of inter-agency memoranda and letters protected by this exemption, the officer authorized to disclose records shall not make a determination to allow access to such matters under the policy set forth in §§ 70.11 and 70.22 if to do so would conflict with the provisions of § 70.31.

§ 70.26 Personnel, medical, and similar files.

(a) Pursuant to exemption (6) set forth in 5 U.S.C. 552(b), and as provided in § 70.22, the disclosure from Department of Labor records of matters in "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" may be refused. In view of the congressional concern expressed in the legislative history regarding the protection of individuals' privacy, each disclosure officer of the Department shall apply the disclosure policy set forth in §§ 70.11 and 70.22 with due regard to the apparent intent of the statutory language to characterize the invasion of personal privacy typically involved in disclosure of personnel and medical files as "clearly unwarranted." "Similar files" for which protection is provided under this exemption appear to refer to any files the disclosure of which would invade personal privacy to such a degree that the disclosure would be as "clearly unwarranted" as the disclosure of personnel or medical files.

(b) Among the records in Department files protected from disclosure by the exemption set forth in paragraph (a) of this section are (1) personnel and background records personal to any officer or employee of the Department, including his home address and telephone number; (2) medical histories and medical records concerning individuals; (3) any other detailed record containing personal information identifiable with a particular individual where it appears that such person's right to have such information protected from public dissemination is clear; and (4) private or personal information in other files which, if disclosed to the public, would amount to a clearly unwarranted invasion of the privacy of any person, including members of the family of the person to whom the information pertains. The disclosure of information about a person to that same person is not, of course, an invasion of such person's privacy.

(c) Related regulations implementing this part and the application of this exemption to personal and medical information in the files of the Employment Standards Administration relating to claims of injured employees for workmen's compensation benefits are referred to in Subpart C.

§ 70.27 Investigatory records compiled for law enforcement purposes.

(a) *Restrictions on public access authorized.* Pursuant to the provisions of exemption (7) set forth in 5 U.S.C. 552(b), as amended by Pub. L. 93-502, 88 Stat. 1563, effective February 19, 1975, the disclosure from Department of Labor records of matters that are "investigatory records compiled for law enforcement purposes" and to which access by the public would be detrimental to such purposes or to rights of privacy as specified in the statute, may be refused. Access to such records may be refused for any one or more of several specific reasons. Thus, exemption (7) protects from the public access requirements of the Freedom of Information Act investigatory records compiled for law enforcement purposes whenever their disclosure to any person requesting them would—

(1) Interfere with enforcement proceedings; and/or

(2) Deprive a person of a right to a fair trial or an impartial adjudication; and/or

(3) Constitute an unwarranted invasion of personal privacy; and/or

(4) Disclose (i) the identity of a confidential source and (ii), in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source; and/or

(5) Disclose investigative techniques and procedures; and/or

(6) Endanger the life or physical safety of law enforcement personnel.

Where one or more of the foregoing consequences would ensue from the disclosure of particular records to any person requesting access to investigatory records compiled for law enforcement purposes, no determination to grant access to such records may be made by the disclosure officer under the disclosure policy set forth in §§ 70.11 and 70.22 in the ordinary case because in such circumstances it would not ordinarily be possible to determine that disclosure would serve the public interest and would not impede any of the functions of the Labor Department.

(b) *"Law enforcement purposes."* The exemption set forth in paragraph (a) of this section expresses the public interest in preventing disclosure detrimental to the enforcement, whether civil or criminal in nature, of applicable laws and in assuring, to this end, that such enforcement will not be jeopardized by disclosing information which would be harmful to citizens who aid the Government in law enforcement investigations and prosecutions, would endanger the persons or handicap the essential enforcement activities of investigators and prosecutors, would violate the rights of persons who may be charged with violations, or would otherwise interfere with investigations and other proceedings to enforce the laws. "Law enforcement" as used in the statute, according to the legislative history, is used in the broadest sense to include the enforcement not only of criminal statutes, but of all laws establishing rules of conduct, whether by statute or by Executive order or by a duly promulgated regulation having the force and effect of law. Moreover, "enforcement" is not limited to enforcement by adversary proceedings, and includes other types of Government law enforcement activities as well; the work of a policeman or a compliance officer is law enforcement even if he does not participate in adversary proceedings. On the other hand, "enforcement" does not include all activities conducted in order to carry out the laws, but only those intended to counteract past, present, or future violations.

(c) *"Investigatory" records.* The protection afforded investigatory records under the exemption set forth in paragraph (a) of this section also extends, according to the legislative history, to those files related to the investigation which are prepared in connection with related Government litigation and adjudicative proceedings. One of the purposes of the exemption is to preserve the position of the Government in litigation or potential litigation, in accordance with the rules governing discovery in cases before courts and administrative agencies. It ensures that the litigant is not given any earlier or greater access to investigatory material than he would have directly in litigation or other enforcement proceedings.

(d) *Records "compiled" for law enforcement purposes.* Whenever the disclosure of investigatory records requested by any person would have any of the consequences specified in the exemption set forth in paragraph (a) of this section, access to such records may be refused if the records have been "compiled" for law enforcement purposes, irrespective of the nature of the action, if any, to carry out such purposes which may have been contemplated at the time of their compilation or may have been taken thereafter as a result of the compilation. Investigatory records shown to have been compiled for law enforcement purposes retain their status as such and continue to be protected from disclosure in the specified circumstances as provided in this exemption whether or not enforcement proceedings are contemplated at the time of investigation or are instituted thereafter or, if brought, have been completed before the request is made for the records. None of these factors negate the need, in the public interest and in the interest of persons who have been the subject of or who have furnished information to help the law enforcement activities of the Government, for continued protection against a prejudicial disclosure from such records of information which may still constitute an unwarranted invasion of personal privacy or may reveal the identity of a confidential source. The subject of an investigation which has been closed because charges of law violation could not be substantiated is entitled to protection from the opprobrium which might follow public disclosure of the record of the charges without opportunity to demonstrate their falsity in an adjudicatory proceeding. An informant whose identity as the source of confidential information furnished in aid of law enforcement activities is made public by disclosure of investigative records may be made subject to retaliatory action by others and in any event may not inform without assurance that private persons will not, through access to the agency's records, be able to identify the informant as the source of the information furnished. Even years after enforcement proceedings are concluded, the public interest may require protection of investigatory records which would identify a confidential source or would reasonably lead to such a disclosure. Any disclosure of such records would soon become a matter of common knowledge and few individuals, if any, would come forth to embroil themselves in controversy or possible recrimination by notifying the Government of something which might justify investigation. Even more important in view of the increasing concern today over the conflict between a citizen's right of privacy and the need of the Government to investigate, it is unthinkable that rights of privacy, whether of subjects or confidential sources, should be jeopardized. In addition, the disclosure of investigatory records may reveal investigative techniques and procedures or endanger the life or physical safety of law enforcement personnel. In either case, the ability of the Government to carry out its law enforcement functions effectively would be seriously impaired.

§ 70.28 Well information.

Pursuant to exemption (9) set forth in 5 U.S.C. 552(b), and as provided in § 70.22, the disclosure from Department of Labor records of matters consisting of geological and geophysical information and data, including maps, concerning wells, may be refused. This exemption supplements the exemption set forth in § 70.23 by removing any doubt that disclosure of this specific type of information is protected under the Act.

§ 70.29 Partial disclosure.

(a) *Deletions to protect personal privacy.* To the extent required to prevent a clearly unwarranted invasion of personal privacy, the officer authorized to disclose information from a record may delete identifying details when he makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction, provided that in every case the justification for the deletion is fully explained in writing.

(b) *Records containing both disclosable and nondisclosable information.* If a requested record or document contains some materials which are protected from disclosure and other materials which are not so protected, identifying details or protected matters shall be deleted whenever analysis indicates that such deletions are feasible. Any reasonably segregable portion of a record or document shall be provided after deletion of protected matter.

(c) *Deletions to protect identity of requester.* Where the identity of an applicant, or other identifying details related to a request, would constitute an unwarranted invasion of personal privacy if made generally available, as in the case of a request to examine one's own medical files, identifying details shall be deleted from copies of the request and written responses to it that are made available to requesting members of the public.

§ 70.30 Withdrawal of originals.

No document or record in the custody of the Department of Labor, or of any agency or officer thereof, shall on any occasion be taken or withdrawn by any agent, attorney, or any other person not officially connected with the Department; no exception will be made without the written consent of the Secretary or the Solicitor of Labor.

§ 70.31 Record of concern to more than one agency.

If the release of a record in custody of the Department of Labor would be of concern not only to the Department but also to another Federal agency, the record will be made available by the Department only if its interest in the record is the primary interest and only after coordination with the other interested agency. If the interest of the Department in the record is not primary, the request will be transferred promptly to the agency having the primary interest, and the applicant will be so notified. The release of information received from another agency and the release to another agency of information collected from persons outside the Government shall be subject to the conditions and restrictions imposed by 44 U.S.C. 3508.

FACILITIES FOR DISCLOSURE

§ 70.35 Where information may be obtained.

(a) Any person desiring to examine or copy records of the Department of Labor known to be situated in any office of the Department and providing information adequate to permit identification of the records sought may obtain from the head of such office information as to the availability of the derived records. Such person will be advised whether such records are available for examination under the provisions of this part and any applicable supplemental regulations (see Subpart C) without the submission of a formal request or whether such a request must be submitted for consideration by an officer responsible for custody of the records under the procedures set forth in §§ 70.42-70.52. If such a request must be submitted, information as to the name, title, and address of the officer to whom it should be addressed will also be furnished. The officers to whom such requests should be addressed are identified in general terms in § 70.43. Such officers may provide access to records at the place where they are kept or, where appropriate, at another location.

(b) If the person desiring access to particular records is in doubt as to the place where they are kept or the agency of the Department listed in paragraph (e) of this section which is responsible for their custody, the necessary information may be obtained by addressing an inquiry, identifying as specifically as possible the records sought, to the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

(c) Indexes, normally in published form, are available to members of the public to assist them in locating records of certain types, as provided in §§ 70.7 and 70.16.

(d) Public reference facilities for examination and copying of certain Department records are maintained in some offices. Their locations and the types of records available for examination therein may be ascertained by addressing an inquiry to the chief officer of the agency of the Department listed in paragraph (e) of this section which has custody of records of the types sought to be examined, or by communicating with the nearest officer of such agency who is authorized to act on requests for its records. If the agency of the Department responsible for custody of the records is not known, the Assistant Secretary for Administration and Management will provide the necessary information on request.

(e) Offices in Washington, D.C., are maintained by the following component agencies of the Department of Labor. Field offices are maintained by some of these, as listed in the Government Organization Manual (see § 70.5(b)).

(1) Office of the Secretary of Labor.

(2) Office of the Solicitor of Labor.

(3) Office of Information, Publications, and Reports.

(4) Bureau of International Labor Affairs.

(5) Bureau of Labor Statistics.

(6) Employment Standards Administration.

(7) Labor-Management Services Administration.

(8) Manpower Administration.

(9) Occupational Safety and Health Administration.

(10) Employees' Compensation Appeals Board.

(11) Wage Appeals Board.

(12) Benefits Review Board.

(13) Board of Contract Appeals.

(14) Office of Administrative Law Judges.

The heads of the foregoing agencies shall make available for inspection and copying in accordance with the provisions of this part, records in their custody or in the custody of component units within their organizations, either directly or through their authorized representatives in particular offices and locations.

§ 70.36 Titles and addresses of the responsible officials of various agencies.

(a)(1) The titles of the responsible officials of the various independent agencies in the Department of Labor are listed below. Unless otherwise specified, the mailing addresses of these officials shall be:

U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210.

Chief, Administrative Law Judge.

Chairperson, Employees Compensation Appeals Board.

Benefits Review Board, Julius Miller, Member.

Executive Assistant to the Secretary.

Executive Assistant to the Under Secretary.

Deputy Under Secretary for International Affairs.

Associate Deputy Under Secretary for International Affairs.

Associate Deputy Under Secretary for Trade and Adjustment Policy.

Director, Office of Information, Publication and Reports.

Executive Assistant to the Assistant Secretary for Policy, Evaluation and Research.

Deputy Solicitor, Office of the Solicitor.

Assistant Secretary for Administration and Management.

Commissioner, Bureau of Labor Statistics.

Assistant Secretary for Labor-Management Relations.

Assistant Administrator for Field Operations, LMSA.

Director, Office of Labor-Management Relations Services.

Director, Office of Labor-Management Policy Development.

Director, Office of Labor-Management Standards Enforcement.

Director, Office of Veterans' Reemployment Rights.

Director, Office of Federal Labor-Management Relations.

Deputy Administrator of Pension and Welfare Benefit Program, Office of Employee Benefits Security.

Director, Office of Administration and Management, LMSA.

Director, Office of Planning, Evaluation and Systems, LMSA.

Assistant Regional Director for Labor-Management Services.

Assistant Secretary for Employment Standards, Employment Standards Administration.

Director, Office of Workers' Compensation Programs.

Associate Director for Federal Employees' Compensation.

Associate Director for Longshore and Harbor Workers' Compensation.

Associate Director for Coal Mine Workers' Compensation.

Administrator, Wage and Hour Division.

Director, Office of Federal Contract Compliance.

Associate Director, OFCC, Teams I-IV.
Associate Director, OFCC, Policies, Plans and Programs.
Associate Director, OFCC, Construction Compliance Division.
Associate Director, OFCC, Training Administrative Support Staff.
Director, Women's Bureau.
Director, Office of Employment Standards for Handicapped Workers.
Director, Office of Administrative Management, ESA.
Director, Office of Program Development and Accountability, ESA.
Director, Office of Information for ESA.
Executive Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
Special Assistant for Public Affairs, OSHA.
Director, Office of Federal Agency Safety Programs, OSHA.
Director, Office of Training and Education, OSHA.
Director, Office of Standards Development, OSHA.
Director, Office of Compliance Programming, OSHA.
Director, Office of State Programs, OSHA.
Director, Office of Field Performance Analysis, OSHA.
Director, Office of Employee Self-Inspection and Consultation Programs, OSHA.
Director, Office of Management Data Systems, OSHA.
Director, Office of Planning, Evaluation, and Research, OSHA.
Equal Employment Opportunity Officer, OSHA.
Director, Office of Personnel Management, OSHA.
Director, Office of Administrative Management, OSHA.
Director, Office of Financial Management, OSHA.
Director, Office of Publications and Visual Aids, OSHA.
Committee Management Officer, OSHA.
Associate Assistant Secretary for Regional Programs, OSHA.
Associate Assistant Secretary for National Programs, OSHA.
Associate Assistant Secretary for Administrative Programs, OSHA.

(2) The mailing address for the responsible officials in the Manpower Administration is the Patrick Henry Building, 601 D Street, NW, Washington, D.C. 20213.

Director, Office of Programs and Management Services, U.S.E.S., Room 8430.
Manpower Development Specialist, Office of Manpower Development Programs, Room 6000.
Deputy Director, Office of Community Manpower Programs, Room 5402.
Program Analyst, Office of Work Incentive Programs, Room 5200.
Chief, Residential Living and Enrollee Support, Job Corps, Room 6122.
Deputy Director, Office of National Programs, Room 6402.
Associate Manpower Administrator for Office of Policy Evaluation and Research. Room 9000.
Special Assistant, Bureau of Apprenticeship and Training, Room 5000.
Chief, Division of Directives Control, Office of Field Direction and Management, Room 10020.
Director, Office of Management Information Systems, Room 4400.
Administrative Assistant to the Director, Unemployment Insurance Service, Room 7000.

(3) The titles of the responsible officials in the field offices of the various independent agencies are listed below. Unless otherwise specified, the mailing addresses for these officials by regions, shall be:

Region I: J. F. K. Building, Government Center, Boston, Massachusetts 02203.
Region II: 1515 Broadway, New York, New York 10036.
Region III: 3535 Market Street, Philadelphia, Pennsylvania 19104.
Region IV: 1371 Peachtree Street, N.E., Atlanta, Georgia 30309.
Region V: 230 South Dearborn Street, Chicago, Illinois 60604.
Region VI: 555 Griffin Square Building, Griffin and Young Streets, Dallas, Texas 75202.
Region VII: Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106.
Region VIII: Federal Office Building, 1961 Stout Street, Denver, Colorado 80202.
Region IX: Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102.
Region X: 909 First Avenue, Seattle, Washington 98174.

Office of the Assistant Secretary for Administration and Management.

Assistant Regional Director for Administration and Management.

Assistant Regional Director for Audit. (All Regions)

Office of Information, Publications and Reports.

Assistant Regional Director for Regions I-IX.

Region X: Assistant Regional Director for Information, 1321 Second Avenue, Arcade Plaza, Seattle, Washington.

Associate Assistant Regional Director, Federal Building, 300 North Los Angeles Street, Los Angeles, California. Manpower Administration.

Region I: Acting Assistant Regional Director for Manpower.

Region II: Assistant Regional Director for Manpower.

Region III: Chief, Division of Administrative Support.

Region IV: Chief of Manpower Data Systems and Analysis.

Region V: Assistant Regional Director for Manpower.

Region VI: Assistant Regional Director for Manpower.

Region VII: Supervisory Contract Specialist.

Region VIII: Assistant Regional Director for Manpower.

Region IX: Executive Assistant to the Assistant Regional Director for Administration and Management.

Region X: Executive Assistant to the Assistant Regional Director for Administration and Management. Labor-Management Services.

Assistant Regional Directors for Labor-Management Services.

Regions II, III, IV, V, VII and IX.

Area Directors for Labor-Management Services.

1371 Peachtree Street, NE., Room 303, Atlanta, Georgia 30309.

100 Tremont Street, Room 211 New Studio Building, Boston, Massachusetts 02108.

111 W. Huron Street, Room 616 Federal Building, Buffalo, New York 14202.

230 S. Dearborn Street, Room 700 Federal Office Building, Chicago, Illinois 60604.

1240 E. 9th Street, Room 821 Federal Office Building, Cleveland, Ohio 44199.

P.O. Box 239, Bryan and Ervay Streets, Room 301 Post Office Building, Dallas, Texas 75221.

1961 Stout Street, 2320 Federal Office Building, Denver, Colorado 80202.

234 State Street, Room 1906 Washington Boulevard Building, Detroit, Michigan 48226.

1833 Kalakaua Avenue, Room 601, Honolulu, Hawaii 96815.

911 Walnut Street, Room 2200, Federal Office Building, Kansas City, Missouri 64106.

300 N. Los Angeles Street, Room 7731 Federal Building.

18350 Northwest Second Avenue, P.O. Box 3750, Norland Branch, Miami, Florida 33169.

110 S. Fourth Street, Room 110, Federal Courts Building, Minneapolis, Minnesota 55401.

1808 West End Building, Room 825, Nashville, Tennessee 37203.

9 Clinton Street, Room 305, Newark, New Jersey 07102.

600 South Street, Room 940, Federal Office Building, New Orleans, Louisiana 70130.

26 Federal Plaza, Room 1751, New York, New York 10007.

600 Arch Street, Room 4256, Federal Office Building, Philadelphia, Pennsylvania 19106.

1000 Liberty Avenue, Room 1436, Federal Office Building, Pittsburgh, Pennsylvania 15222.

210 N. Twelfth Boulevard, Room 570, St. Louis, Missouri 63101.

100 McAllister Street, Room 1604, San Francisco, California 94102.

605 Condado Avenue, Room 704, Condominio San Alberto, Santurce, Puerto Rico 00907.

506 Second Avenue, Room 3301, Smith Tower Building, Seattle, Washington 98104.

1111 20th Street, NW., P.O. Box 19257, Room 509, Vanguard Building, Washington, D.C. 20036.

The Employment Standards Administration.

Associate Assistant Regional Director for Wage and Hour Division: All Regions.

Associate Assistant Regional Director for Office of Federal Contract Compliance: All Regions.

Associate Assistant Regional Director for Women's Bureau: All Regions.

Associate Assistant Regional Director for Program Development and Accountability: All Regions.

Office of Workers' Compensation Programs. Deputy Commissioner:

147 Milk Street, Boston, Massachusetts 02109.

1515 Broadway, New York, New York 10036.

3535 Market Street, Philadelphia, Pennsylvania 19104.

Charles Center South, 31 Hopkins Plaza, Baltimore, Maryland 21201.

Stanwick Building, 3661 Virginia Beach Boulevard, East, Norfolk 23502.

400 West Bay Street, Box 35049, Jacksonville, Florida 32202.

Federal Office Building, 600 South Street, New Orleans, Louisiana 70130.

2320 LaBranch Street, Houston, Texas 77004.

Room 879, 1240 East Ninth Street, Cleveland, Ohio 44199.

230 South Deaborn Street, Chicago, Illinois 60604.

1910 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106.

Room 303, 1531 Stout Street, Denver, Colorado 80202.

450 Golden Gate Avenue, Box 36022, San Francisco, California 94102.

Federal Office Building, 909 First Street, Seattle, Washington 98174.

Room 610, 1833 Kalakaua Avenue, Honolulu, Hawaii 96815.
Room 405, McLachlen Building, 666 11th Street, NW., Washington, D.C. 20211 (FECA).
1717 K Street, NW., Washington, D.C. 20211 (DCCA).
Director, Condominio San Alberto Building, 7th Floor, 1200 Ponce de Leon Avenue, Santurce, Puerto Rico 00907.

Occupational Safety and Health Administration.

Director, OSHA Training Institute, 10600 W. Higgins Road, Rosemont, Illinois 60018.

Assistant Regional Directors:

Region I, 18 Oliver Street, Boston, Massachusetts 02110.
Regions II, III, IV, V, VI, VII, VIII, and IX.
Region X, 1808 Smith Tower Building, 506 Second Avenue, Seattle, Washington 98104.

Area Directors:

Custom House Building, Room 703, State Street, Boston, Massachusetts 02109.
Federal Building, Room 426, 55 Pleasant Street, Concord, New Hampshire 03301.
Federal Building, Room 617B, 450 Main Street, Hartford, Connecticut 06103.
U.S. Post Office and Courthouse Building, Room 501, 436 Dwight Street, Springfield, Massachusetts 01103.
370 Old Country Road, Garden City, L.I., New York 11530.
90 Church Street, Room 1405, New York, New York 10007.
970 Broad Street, Room 1435C, Newark, New Jersey 07102.
605 Condado Avenue, Room 328, Santurce, Puerto Rico 00907.
Midtown Plaza, Room 203, 700 E. Water Street, Syracuse, New York 13210.
Room 411, Railway Labor Building, 400 1st Street NW., Washington, D.C. 20210.
Federal Building, Room 1110A, Charles Center, 31 Hopkins Plaza, Baltimore, Maryland 21201.
Charleston National Plaza, Room 1726, 700 Virginia Street, Charleston, West Virginia 25301.
Jonnet Building, Room 802, 4099 William Penn Highway, Monroeville, Pennsylvania 15146.
William J. Green, Jr., Federal Building, Room 4456, 600 Arch Street, Philadelphia, Pennsylvania 19106.
Room 8015, Federal Building, P.O. Box 10186, 400 North 8th Street, Richmond, Virginia 23240.
Todd Mall, 2047 Canyon Road, Birmingham, Alabama 35216.
1710 Gervais Street, Room 205, Columbia, South Carolina 29201.
Bridge Building, Room 204, 3200 E. Oakland Park Blvd., Ft. Lauderdale, Florida 33308.
57601-55 North Frontage Road East, Jackson, Mississippi 39211.
Art Museum Plaza, Suite 4, 2809 Art Museum Drive, Jacksonville, Florida 32207.
600 Federal Place, Suite 554-E, Louisville, Kentucky 40202.
Riverside Plaza Shopping Center, 2720 Riverside Drive, Macon, Georgia 31204.
Commerce Building, Room 600, 118 North Royal Street, Mobile, Alabama 36602.
1600 Hayes Street, Suite 302, Nashville, Tennessee 37203.
Federal Office Building, Room 406, 310 New Bern Avenue, Raleigh, North Carolina 27601.
Enterprise Building, Suite 204, 6605 Abercon Street, Savannah, Georgia 31405.
650 Cleveland Street, Room 44, Clearwater, Florida 33515.
Building 10, Suite 33, La Vista Perimeter Office Park, Tucker, Georgia 30084.
10th Floor, 230 South Dearborn Street, Chicago, Illinois 60604.
Federal Office Building, Room 4028, 550 Main Street, Cincinnati, Ohio 45202.
Federal Office Building, Room 847, 1240 East 9th Street, Cleveland, Ohio 44199.
360 South 3rd Street, Room 109, Columbus, Ohio 43215.
Michigan Theatre Building, Room 626, 220 Bagley Avenue, Detroit, Michigan 48226.
U.S. Post Office and Courthouse, Room 423, 46 East Ohio Street, Indianapolis, Indiana 46202.
Clark Building, Room 400, 633 West Wisconsin Avenue, Milwaukee, Wisconsin 53203.
110 South 4th Street, Room 437, Minneapolis, Minnesota 55401.
Federal Office Building, Room 734, 234 North Summit Street, Toledo, Ohio 43604.
Federal Building, Room 302, 421 Gold Avenue SW., P.O. Box 1428, Albuquerque, New Mexico 37103.
Adolphus Tower, Suite 1820, 1412 Main Street, Dallas, Texas 75202.
2320 La Branch Street, Room 2118, Houston, Texas 77004.
Federal Building, Room 421, 1205 Texas Avenue, Lubbock, Texas 79401.
Donaghey Building, Room 526, 103 E. Seventh St., Little Rock, Arkansas 72201.
546 Carondelet St., Room 202, New Orleans, Louisiana 70130.
Petroleum Building, Room 512, 420 South Boulder, Tulsa, Okla. 74103.
1015 Jackson Keller Road, Room 122, San Antonio, Texas 78213.
210 Walnut Street, Room 643, Des Moines, Iowa 50309.
1627 Main Street, Room 1100, Kansas City, Missouri 64108.
113 W. Sixth Street, North Platte, Nebraska 69101.

Harney & 16th St., Room 803, City National Bank Building, Omaha, Nebraska 68102.
210 N. 12th Boulevard, Room 554, St. Louis, Missouri 63101.
Petroleum Building, Suite 312, 221 S. Broadway St., Wichita, Kansas 67202.
Petroleum Building, Suite 525, 2812 First Avenue North, Billings, Montana 59101.
Squire Plaza Building, 8527 West Colfax Avenue, Lakewood, Colorado 80215.
U.S. Post Office Building, Room 452, 350 South Main Street, Salt Lake City, Utah 84101
Courthouse Plaza Building, Room 408, 300 North Dakota Avenue, Sioux Falls, South Dakota 57102.
1100 E. William Street, Carson City, Nevada 89701.
333 Queen Street, Suite 505, Honolulu, Hawaii 96813.
Hartwell Building, Room 401, 19 Pine Avenue, Long Beach, California 90802.
Amerco Towers, Suite 318, 2721 North Central Avenue, Phoenix, Arizona 85004.
100 McAllister Street, Room 1706, San Francisco, California 94102.
Federal Building, Room 227, 605 W. Fourth Avenue, Anchorage, Alaska 99501.
121 107th St. NE., Bellevue, Washington 98004.
228 Idaho Building, 216 North Eighth St., Boise, Idaho 83702.
Pittock Block, Room 526, 921S West Washington St., Portland, Oregon 97205.

District supervisors:

Federal Building, Room 503A, U.S. Courthouse, Providence, Rhode Island 02903.
Stanwick Building, Room 111, 3661 Virginia Beach Boulevard, Norfolk, Virginia 23502.
600 Leopard Street, Suite 1322, Corpus Christi, Texas 78401.

[40 FR 27444, June 30, 1975; 41 FR 17546, Apr. 27, 1976]

PROCEDURE FOR DISCLOSURE

§ 70.41 Applicability of procedures.

Requests for inspection or copying of information from records in the custody of the Department of Labor which are available under the provisions of this part shall be made and acted upon as provided in the following sections of this subpart. The prescribed procedure shall be followed in all cases where access is sought to official records pursuant to the provisions of the Freedom of Information Act, except with respect to records for which a less formal disclosure procedure is provided specifically in this part or in any supplemental regulation referred to in Subpart C. Officers and employees of the Department may be authorized by the Secretary, or by the head of the agency in the Department having custody of the record, to continue to furnish to the public, informally and without compliance with these procedures, information and copies from its records which prior to enactment of the Freedem of Information Act (5 U.S.C. 552) were customarily furnished in the regular performance of their duties.

§ 70.42 Submittal of requests for access to records.

(a) Any person who desires to inspect or copy any record covered by this part, including any writing, drawing, map, recording, tape, film, photograph, or other documentary material by which information is preserved, shall submit a written request to that effect to the agency of the Department of Labor (see the listings in §§ 70.35(e) and 70.36) which has custody of the record.

(b) Standard forms for making a request are not required. However, to expedite the processing of requests submitted in accordance with paragraph (a) of this section each such request should clearly indicate on the envelope and on the request the following: F.O.I.A. request.

(c) To avoid delay in receipts of a sufficiently complete request at the agency in cases where the search and copying charges are not known or estimated and agreed upon in advance but may be substantial, the request in such a case should, as provided in § 70.64(b), state specifically that whatever costs will be involved pursuant to §§ 70.62–70.63 will be acceptable, or will be acceptable up to an amount not exceeding a named figure.

§ 70.43 To whom to direct requests.

(a) A request for records in the custody of the Bureau of Labor Statistics shall be directed to the Commissioner of Labor Statistics, Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210. In the case of records in the custody of other agencies of the Department, the request shall be directed to the chief of such agency, unless the record asked for is kept in one of its field offices. If the desired record is kept in a field office, the request shall be directed to the field official having the principal responsibility to the agency for the custody of the records in that office, who may, for brevity, be referred to as the "responsible field official." The responsible field official may be identified as follows:

(1) In the case of records kept in a regional office, the chief of such office (for aid in identification, see § 70.36).

(2) In the case of records relating to compensation claims under laws providing compensation for work injuries to employees and under the War Hazards Act and Defense Base Act, the deputy commissioner of the district office in which the records are kept.

(3) In the case of records kept in any other field office, the chief of the regional office, or of the highest field office which, pursuant to authority from the agency of the Department administering the program to which the record relates, is responsible for the direct supervision of operations under such program in the field office where the record is kept. If the person making the request does not know where the record is located, he may direct his request to the Assistant Secretary of Labor for Administration and Management, Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, for appropriate handling.

(b) The agencies of the Department of Labor, referred to in paragraph (a) of this section, are, or are constituent units of, the agencies listed in § 70.35(e). Heads and responsible field officials of these agencies are further identified in § 70.36. For purposes of submittals of requests for records under this section, the chief of the Office of the Secretary shall be considered to be the Assistant Secretary for Administration and Management, and the chief of the Office of the Solicitor shall be considered to be the Deputy Solicitor. The general organization of the Department of Labor, its principal officers, and addresses of its regional and other field offices may be found in the "U.S. Government Organization Manual" referred to in § 70.5(b).

§ 70.44 Description of information requested.

Each request should reasonably describe the record or records sought; i.e., in sufficient detail to permit identification and location thereof with a reasonable amount of effort. So far as practicable, the request should specify the subject matter of the record, the date or approximate date when made, the place where made, the person or office that made it, and any other pertinent identifying details.

§ 70.45 Deficient descriptions.

If the description is insufficient so that a professional employee who is familiar with the subject area of the request cannot locate the record with a reasonable amount of effort, the officer processing the request will notify the applicant and, to the extent possible, indicate the additional information required. Every reasonable effort shall be made to assist an applicant in the identification and location of the record or records sought. Records will not be withheld merely because it is difficult to find them.

§ 70.46 Requests for categories of records.

Requests calling for all records falling within a reasonably specific category will be regarded as reasonably described within the meaning of § 70.44 and the statutory requirement if the Department is reasonably able to determine which records come within the request and to search for and collect them, at least where such search can be accomplished without unduly interfering with Department operations because of staff time consumed or the resulting disruption of files. If undue disruption of agency operations would result from fulfilling the request, the officer to whom the request was submitted shall promptly give the applicant notice thereof and the opportunity to confer with him in an attempt to reduce the request to manageable proportions by reformulation and by outlining an orderly procedure for the production of the records.

§ 70.47 Receipt by agency of request; acknowledgment.

(a) Since the officer responsible for acting upon a request for access to records of the Department or a constituent agency thereof must take the necessary action promptly after receipt of the request and a determination regarding disclosure must in any event be dispatched to the requester within a prescribed period after such receipt as set forth in § 70.53, such officer shall, upon receipt of such request, have the date and time of such receipt immediately inscribed thereon and give contemporaneous notice to the requester that the request was received on such date. Such notice shall also advise the requester of the time within which it is anticipated that a response will be made. If it appears from the request that the unusual circumstances set forth in § 70.55(b) may require extension of the normal time limit for responding to the request, and if such extension is authorized pursuant to § 70.55(c), the acknowledgment of receipt shall contain the information required by § 70.53(b).

(b) Each agency of the Department of Labor shall make provision for transmittal procedures which will expedite on a priority basis the receipt by the proper disclosure officer of incoming requests for access to records on which such officer must pass but which initially come to some other office or agency of the Department. Requesters can assist the Department in this regard by proper marking of their requests as indicated in § 70.42(b).

(c) In accordance with the rules set forth in Subpart B of this part, the request by a person for access to records requiring substantial search and/or copying services must be accompanied by payment or assurance of payment of any fees therefor applicable under the statute and this part, and action thereon may not be required in the absence of such payment or assurance. As provided in § 70.64(b), and to protect requesters from an unexpected accrual of liability greater than they may wish to assume for access to requested records when they do not know or have any estimate of the applicable fees and the agency anticipates that search and/or copying charges may exceed $25, no receipt of a complete request will be deemed to have occurred (and, therefore, the provisions of paragraph (a) of this section will not be applicable) unless or until (1) the requester specifically states that whatever costs will be involved pursuant to §§ 70.62–70.63 will be acceptable or will be acceptable up to an amount not exceeding a named figure, or (2) prompt notification has been given to the requester of the agency's estimate of the costs and the requester has perfected the request by payment or assurance of payment thereof. Upon completion of the request by such payment or assurance of payment, the request will be deemed to have been made in accordance with the published rules as to fees and receipt will be acknowledged as provided in paragraph (a) of this section.

§ 70.48 Action on request.

(a) The officer responsible for determining whether a request for agency records will be complied with in whole or in part shall cause any necessary search to be made promptly upon receipt of a request made in accordance with the rules published in this part and, after location of the requested records and such examination as may be necessary, shall proceed, as expeditiously as possible and within the time limitations set forth in § 70.53, to determine whether and to what extent the request may be granted pursuant to the policy of disclosure set forth in § 70.11 and the provisions of §§ 70.21, 70.22, and 70.29, and to advise the requester immediately of such determination.

(b) When a determination to grant the request with respect to all or any portion of the records requested is made, such records shall be made available to the requester at the time he is advised of the determination or as promptly thereafter as possible.

§ 70.49 Form of denials.

A reply denying a written request for a record or portion thereof shall be in writing and shall contain a brief statement of the reasons for the denial, including (except in case of a denial for the reasons set forth in § 70.53(c)) a reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record and an explanation of how the exemption applies to the matter withheld. The denial shall also include the name and title or position of the person(s) responsible for the denial and an outline of the appeal procedure available.

§ 70.50 Appeals from denial of requests.

An applicant whose request for a record or portion thereof has been denied pursuant to § 70.49 may file an appeal within 90 days from the date of the denial or in the case of a partial denial, 90 days from the date the material is received by the requester. The appeal shall state, in writing, the grounds for appeal, including any supporting statements or arguments. The appeal shall be addressed to the Solicitor of Labor, Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210. To expedite the processing of the appeal, each such appeal should clearly indicate on the envelope and on the appeal the following: F.O.I.A. Appeal.

§ 70.51 Receipt by Solicitor of appeal; acknowledgment.

Since action on an appeal from a denial of a request for records must be taken promptly after the receipt of the appeal by the Solicitor and in any event within the prescribed time limits following such receipt as set forth in § 70.54, each such appeal, when received by the Solicitor, shall have the date and time of such receipt inscribed thereon and the appellant shall immediately be notified of the time of receipt as so inscribed. To expedite the handling of appeals as much as possible, the Department will maintain internal procedures designed to assure transmittal to and receipt by the Solicitor of incoming appeals on a priority basis. Appellants can assist the Department in this regard by proper marking of their appeals as indicated in § 70.50.

§ 70.52 Action on appeals.

(a) As promptly as possible after receipt of an appeal and within the time limits specified in § 70.54, the Solicitor shall review the appellant's supporting papers and pass on the appeal. In his review of the matter on appeal, the Solicitor is authorized to determine de novo, in the light of the disclosure policy set forth in § 70.11, whether the denial of appellant's request for access to records was proper and in accord with the applicable provisions of the statute and the pertinent regulations. In the event that the denial appealed from is one made pursuant to the provisions of paragraph (c) of § 70.53 by reason of inability of the disclosure officer to make an informed determination within the specified time limits, the Solicitor's decision shall take into consideration any supplementary determination by the disclosure officer made pursuant to the provisions of such paragraph.

(b) The Solicitor may proceed as provided in paragraph (a) of this section to take the necessary action on the appeal notwithstanding the pendency of any action for judicial relief against withholding of records requested pursuant to this part, unless otherwise directed by the court. The Solicitor may take such action whether the judicial relief was sought prior to any determination by the disclosure officer to grant or deny the request in whole or in part, or was applied for before or after the filing of the appeal. In the event that a requester seeks review by a court of the denial by a disclosure officer of a request for agency records without first filing an appeal to the Solicitor as provided in this part, the Solicitor may, unless otherwise ordered by the court, consider such action as the filing of an appeal and issue a decision thereon within the period specified in § 70.54 and in accordance with the provisions of paragraph (a) of this section. In any of the foregoing circumstances a final decision by the Solicitor to grant access to records would make unnecessary a ruling by the court with respect thereto.

(c) The Solicitor shall issue a decision in writing granting or denying the appeal in whole or in part and, if the appeal is granted with respect to any or all of the requested records, the Solicitor shall order such records to be made available promptly to the appellant. If the appeal is denied wholly or in part, the decision shall set forth each exemption provided in 5 U.S.C. 552 which is relied on, how it applies to the record or portion thereof which had been withheld, and the reasons for asserting it. The decision of the Solicitor shall be the final action of the Department of Labor with respect to the request. The notification to the requester of any decision upholding a denial in whole or in part of the request shall include notice of the provisions for judicial review set forth in 5 U.S.C. 552(a)(4).

(d) Copies of both grants and denials on appeal shall be collected in one file open to the public (subject to provisions of § 70.29(c)) and indexed in accordance with §§ 70.7 and 70.16.

TIME LIMITATIONS FOR ACTION ON REQUESTS AND APPEALS

§ 70.53 Period within which action on request shall be taken.

(a) As soon as possible and within a period not to exceed 10 working days after receipt (see § 70.47) of a request for agency records reasonably described and requested in accordance with the regulations published in this Part 70 and such supplementary regulations referred to in Subpart C hereof as may be pertinent, the officer responsible for acting on the request shall determine that such request will be granted or denied in whole or in part as provided in this Part 70, and shall thereupon immediately notify the requester of such determination and the reasons therefor. The provisions of paragraphs (b), (c), and (d) of this section are applicable where a final determination to grant or deny the request has not been made within the 10-day period with respect to all the records requested.

(b) As provided in § 70.55, an extension of the 10-day period for action on the request may be determined to be necessary because of unusual circumstances. If such an extension has been authorized as provided in § 70.55(c), the officer responsible for acting on the request shall notify the requester in writing within such 10-day period of the extension and the reasons therefor, specifying the date on which the determination to grant or deny the request is expected to be dispatched.

(c) If the disclosure officer is unable to grant the request as to all or any part of the records sought within the 10-day period specified in paragraph (a) or such extended period as may be specified pursuant to paragraph (b), because some or all of the records have not been located or made available for examination and consideration in time to make an informed determination, the officer may, within such period, respond to the request with respect to such records by denying access thereto at such time, with notification to the requester of such reasons and of the right to appeal such denial pursuant to the provisions of the Freedom of Information Act and this part within the 90-day period provided in § 70.50. In such event the officer shall further advise the requester that the search or examination will be continued and that the denial will be subject to withdrawal, modification, or confirmation by a supplementary determination to be made as soon as processing of the request can be completed. If an appeal is filed from the initial denial, the Solicitor shall act thereon as provided in § 70.52.

(d) If the officer who must pass upon the request fails to make a determination to grant or deny access to requested records as provided in paragraph (a) or (c) within the 10-day period specified in paragraph (a) or an extension thereof as specified pursuant to paragraph (b), the requester shall be deemed to have exhausted his administrative remedies and may apply for judicial relief against the withholding of such records as provided in the Freedom of Information Act. In such event, however, the court may allow additional time as provided in the Act, upon a showing of exceptional circumstances and the exercise of due diligence in responding to the request. In view of this, where despite due diligence exceptional circumstances have prevented a timely determination, the disclosure officer shall so advise the requester, explaining fully the facts and circumstances and that processing of the request will continue with the expectation that a determination can be made by a stated date, and shall solicit agreement by the requester to delay any application for judicial relief until such date. Processing of the request shall continue until such determination is made, however, irrespective of whether the requester agrees to defer court action or applies for judicial relief. If it is finally determined to grant access to any such records, no judicial relief would be necessary with respect thereto.

§ 70.54 Period within which action on appeal shall be taken.

(a) After receipt (see § 70.51) of an appeal from a denial of a request for agency records, the Solicitor shall as soon as possible within a period not to exceed 20 working days or such extended period as may be authorized pursuant to § 70.55(d) issue the decision on the appeal as provided in § 70.52.

(b) If a decision on the requester's appeal from a denial of access to agency records is not made by the Solicitor within the normal or extended period applicable under paragraph (a), the requester shall be deemed to have exhausted his administrative remedies and may apply for judicial relief against the withholding of the requested records as provided in the Freedom of Information Act. In such event, however, the court may allow additional time as provided in the Act, upon a showing of exceptional circumstances and the exercise of due diligence in responding to the request. In view of this, where despite due diligence exceptional circumstances have prevented a timely decision on the appeal, the Solicitor shall so advise the requester, explaining fully the facts and circumstances and that processing of the appeal will continue with the expectation that a decision will be made by a stated date, and shall solicit agreement by the requester to delay any application for judicial relief until such date. Processing of the appeal shall continue until a decision thereon is made, however, irrespective of whether the requester agrees to defer court action or applies for judicial relief. If it is finally determined to grant the appeal as to any of the requested records, no judicial relief will be necessary with respect thereto.

§ 70.55 Extension of period for taking action on request or appeal.

(a) *Extension in unusual circumstances, generally.* Pursuant to paragraph 6(B) of 5 U.S.C. 552(a) as amended, the maximum period of 10 working days normally allowed (see § 70.53) for making the determination in response to a request for agency records submitted as provided in this part, or the maximum period of 20 working days normally allowed (see § 70.54) for deciding an appeal from a denial of the request for any such records in whole or in part, may be extended in the unusual circumstances described in paragraph (b) of this section for an additional period by written notice from the disclosure officer or the Solicitor, as the case may be, to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. Such additional time may be provided only to the extent reasonably necessary to the processing of the particular request and no extension for more than an additional 10 working days is permitted. Such extensions shall be allowed only as provided in paragraphs (c) and (d) of this section, so that the total additional time made available thereby for determining the action to be taken on a particular request, whether by the disclosure officer or by the Solicitor in the event of appeal, or by both together, will not exceed 10 working days.

(b) *Unusual circumstances which may justify extended time.* The unusual circumstances which may justify an extension, as provided in paragraph (a), of the time for taking action on a request for records or an appeal from a denial of the request in whole or in part are:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct

records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein. Consultations between an agency unit and its legal counsel, the public information staff, or the Department of Justice are not unusual circumstances within the meaning of this paragraph and should not be considered the basis for an extension as provided in paragraph (a) and paragraph (c) or paragraph (d).

(c) *Extension of period for disclosure officer to determine action to be taken on request.* The disclosure officer passing upon the request for records may, to the extent reasonably necessary to the proper processing of such request in the unusual circumstances set forth in paragraph (b), extend the period for determining the action to be taken thereon beyond the normal 10-day limit as provided in paragraph (a), but only with the prior approval of the Solicitor and for such period up to but not in excess of 10 additional working days as the Solicitor shall approve. Notification shall be given to the requester as provided in § 70.53(b).

(d) *Extension of period for Solicitor to decide appeal from denial of access to requested records.* The Solicitor may, to the extent necessary to the proper processing of an appeal from a denial of a request for agency records, extend the period for deciding such appeal beyond the normal 20-day limit by written notice to the appellant as provided in paragraph (a), but only in the unusual circumstances set forth in paragraph (b) and in no event for more than 10 additional working days or such portion thereof as remains after any extension previously made pursuant to paragraph (c).

(e) *Further provisions for extension of time for taking action.* As noted in § 70.53(d) and § 70.54(b), notwithstanding the fact that a requester is deemed to have exhausted his administrative remedies and may apply for judicial relief under the Freedom of Information Act when the disclosure officer or the Solicitor fails to take the necessary action with respect to a request for records or an appeal from a denial thereof within the normal or extended time limits prescribed in the Act, the court in any such action may, upon a showing of exceptional circumstances and the exercise of due diligence in responding to the requester, allow additional time to complete the necessary review. While any deferral of an application for judicial relief under such circumstances is within the discretion of the requester, the responsible officer will, pursuant to the rules in this part, continue to proceed to a determination of the matter before him and, if the determination is to grant access to the requested records, the necessity for judicial relief will be obviated.

Subpart B—Copies of Records and Fees for Services

SPECIAL SEARCHING AND COPYING SERVICES

§ 70.61 Charges for services, generally.

(a) Pursuant to the provisions of the Freedom of Information Act, as amended, the payment of standard charges as set forth in the fee schedule in § 70.62 will, except as otherwise provided in this subpart, be required of the requester to cover the direct costs of searching for and duplicating records requested under the Act from the Department or any of its constituent agencies. Where the direct cost to the agency of making the search is substantial, fees for searching as provided in the schedule will be charged even if the record searched for is not found or if, after it is found, it is determined that the request to inspect it must be denied under the provisions of 5 U.S.C. 552(b) and the regulations in this part.

(b) Circumstances under which searching and copying facilities or services may be made available to the requester without charge or at a reduced charge are delineated in §§ 70.65-70.67. Recoupment of agency costs for determining whether a requested record is disclosable under the statute and this part and for making deletions of portions exempted from disclosure by the Act has been excluded from consideration in arriving at the standard charges contained in the fee schedule and no charge is made to a requester for the cost of any such services. However, where a requester desires the agency to provide such services as certification, authentication, or other special services not required under the Freedom of Information Act with respect to requested records, fees in addition to the standard charges for search and copying will be charged to cover the agency costs as indicated in §§ 70.68-70.69 and as authorized by the special provisions in Subchapter II of Title 29 of the United States Code and the general user-charge statute, section 483a of Title 31, United States Code.

§ 70.62 Search and copying charges.

(a) *Fee schedule for searching records.* Where agency records must be searched to locate a requested record, charges applicable under this subpart to the search will be made according to the following fee schedule:

(1) *Search time.* (i) Ordinary search by custodial or clerical personnel, $1.25 for each one-quarter hour or fraction thereof of employee worktime in excess of the first quarter-hour required to reach or obtain the records to be searched and to make the necessary search; and

(ii) Search requiring services of professional or supervisory personnel to locate requested record, $2.50 for each such quarter-hour of such services required.

(2) *Additional search costs.* If the search for a requested record requires transportation of the searcher to the location of the records or transportation of the records to the searcher, at a cost in excess of $5, actual transportation costs will be added to the search time cost.

(3) *Search in computerized records.* Special fees to cover direct personnel and machine time costs of such searches will be charged as set forth in the above fee schedule and § 70.63.

(b) *Fee schedule for copying of records.* The fees payable pursuant to this subpart for obtaining requested copies of records which have been made available for inspection under the Freedom of Information Act will be computed on the following basis and subject to the following conditions:

(1) *Standard copying fee:* $0.10 per page of record copies furnished. This has been determined to be a reasonable standard charge to cover direct costs to the Department of duplicating records where the volume of page copies furnished is not extraordinary. The standard fee is applicable both where the copies are reproduced by the person desiring them, using Government-furnished reproduction equipment, such as coin-operated machines, which may be made available for use by any number of the public, and where, in the absence of availability of such facilities, the copies are reproduced by agency personnel. This standard fee is also applicable to the furnishing of copies of available computer printouts as stated in § 70.63(a)(1).

(2) *Voluminous material.* If the volume of page copy desired by the requester is such that the reproduction charge at the standard page rate would be in excess of $200, the person desiring reproduction may request special rate quotation from the Office of the Assistant Secretary for Administration and Management.

(3) *Limit of service.* Not more than 10 copies of any document will be furnished.

(4) *Manual copying by requester.* No charge will be made for manual copying by the requesting party of any document made available for inspection under the provisions of this part. The Department shall provide facilities for such copying without charge at reasonable times during normal working hours.

(c) *Transcripts of proceedings.* Where pursuant to the provisions of this part there is made available for inspection and copying the transcript of a hearing or other proceeding pertaining to matters within the purview of the Department of Labor or any of its programs, constituent agencies, or advisory committees, no search charge will be made. Copies of such transcripts will normally be furnished upon payment of the actual cost of duplication as computed pursuant to the fee schedule in paragraph (b). If, however, the transcript was furnished to this Department under the provisions of a contract executed prior to January 5, 1973, the effective date of the Federal Advisory Committee Act, under contractual provisions which prohibit the Department from reproducing the transcript, copies of such transcripts prepared by persons or firms reporting the proceedings may be obtained upon application to the reporter and payment of the reporter's fees at the rate provided in the contract. The foregoing fees are not applicable to the furnishing of any copies of such transcripts to any person entitled to receive such copies without charge pursuant to a regulation or order issued by the Secretary or his authorized representative.

(d) *Indexes.* Pursuant to 5 U.S.C. 552(a)(2), copies of indexes or supplements thereto which are maintained as therein provided but which have not been published will be provided on request at a cost not to exceed the direct cost of duplication as computed pursuant to the fee schedule in paragraph (b) of this section.

§ 70.63 Computerized records.

(a) Information available in whole or in part in computerized form which is disclosable under the Freedom of Information Act is available to the public as follows:

(1) When there is an existing printout from the computer which permits copying the printout, the material will be made available at the per page rate stated in § 70.62(b)(1) for each 8½- by 11-inch page.

(2) When there is not an existing printout of information disclosable under the Freedom of Information Act, a printout shall be made provided the applicant pays the cost to the Department as hereinafter stated.

(3) Obtaining information from computerized records frequently involves a minimum computer time cost of approximately $100 per request. Multiple requests involving the same subject may cost less per request. Services of personnel in the nature of a search shall be charged for at rates prescribed in § 70.62(a). A charge shall be made for the computer time involved based upon the prevailing level of costs to Government organizations and upon the particular types of computer and associated equipment and the amounts of time on such equipment that are utilized. A charge shall also be made for any substantial amounts of special supplies or materials used to contain, present or make available the output of computers based upon the prevailing levels of costs to Government organizations and upon the type and amount of such supplies and materials that are used.

(b) Information in the Department's computerized records which could be produced only by additional programming of the computer, thus producing information not previously in being, is not required to be furnished under the Freedom of Information Act. In view of the usually heavy workloads of the computers used by the Department, such a service cannot ordinarily be offered to the public.

§ 70.64 Payment of fees.

(a) *Medium of payment.* Payment of the applicable fees as set forth in §§ 70.62 and 70.63 shall be made in cash, by U.S. postal money order, or by check payable to the Department of Labor. Postage stamps will not be accepted in lieu of cash, checks, or money orders as payment for fees specified in the schedule. Cash should not be sent by mail.

(b) *Advance payment or assurance.* Payment of the known and officially estimated searching and copying fees shall be made or assured to the satisfaction of the disclosure officer prior to the performance of substantial searching or copying services. Where the requester does not know and has no official estimate of the search and copying costs at the time the request is made, the request should specifically state that whatever costs will be involved pursuant to §§ 70.62-70.63 will be acceptable, or will be acceptable up to an amount not exceeding a named figure. A request made without such specific assurance of payment of fees, in an amount at least equal to the charges under §§ 70.62-70.63 which the Department anticipates will be necessary, will, if such estimated charges are in excess of $25, not be deemed to have been received by the Department until the requester has been notified (promptly upon physical tender of the request) of the Department's cost estimate and has perfected the request by paying the estimated charges or giving satisfactory assurance that payment will be made. In the event that a request is made only for inspection of a record, advance payment or assurance of payment as set forth in this paragraph is applicable only with respect to searching fees; charges for copying will not be made unless or until copies are requested.

(c) *Adjustment of fees.* Where an estimated fee paid by the requester in advance exceeds the fee chargeable under the applicable schedule for the search or copying services actually performed, the balance will be refunded by the Department. Where the actual fees due for the services are in excess of the estimate, the requester will be required to remit the difference. In cases where the estimated costs required under the fee schedule for responding to a request are such that an advance deposit is deemed necessary, and it appears that the information sought by the requester might be made available at less cost by revision of the request, the Department's advice to the requester of the estimated costs and the need for an advance deposit will be accompanied by extension of an offer to the requester to confer with knowledgeable Department personnel with a view to reformulation of the request in a manner which will reduce the fees and meet the needs of the requester.

(d) *Post-copying costs.* The scheduled fees for furnishing copies of records made available pursuant to the Act for inspection and copying cover the costs of furnishing the copies at the place of duplication. Where requests for such copies are made by mail, no postage charge will be made for transmitting by regular mail a single copy of the requested record to the requester, or for mailing additional copies where the total postage cost does not exceed $1. However, where the volume of page copy or method of transmittal requested is such that transmittal charges to the Department are in excess of $1, the transmittal costs will be added to the copying fee specified in accordance with the schedule, unless appropriate stamps or stamped envelopes are furnished with the request, or authorization is given for collection of shipping charges on delivery.

§ 70.65 Standard fees not charged in certain circumstances.

The searching and copying fees set forth in this subpart are intended to cover agency costs of furnishing services that are special to the requester and above and beyond those which are generally provided to the public at large. Where furnishing the information requested can be considered as primarily benefiting the general public, the Freedom of Information Act provides that the agency may determine that waiver or reduction of the standard charges for searching and copying is in the public interest, in which event requested records shall be made available without charge or at a reduced charge. On this basis as well as for other reasons which have satisfied the Department that it is in the public interest to do so, the standard fees for making a requested record available will, in certain circumstances, not be charged or will be reduced as stated in the sections following. In addition, where the disclosure officer granting the request for a record determines that the waiver or reduction of the standard charge would be in the public interest because of the primary benefit to the general public of disclosure of the requested information, the disclosure officer shall advise the requester that the requested record will be made available without charge or at a reduced charge which he shall specify.

§ 70.66 Services performed without charge.

(a) No searching charge under § 70.62(a) shall be made for routine procurement for inspection from Department records, not requiring more than one-quarter hour of personnel time, of any record required by the Freedom of Information Act to be made available for public inspection on request.

(b) The searching fees set forth in § 70.62(a) shall not be charged for the production of any requested record material maintained in a public reference facility of the Department or any of its component units, or for searching for any records available for public inspection without formal request pursuant to the rules in this part and supplemental regulations issued as provided in Subpart C, or for producing any record required by statute to be made available for inspection without charge.

(c) The fees provided for copies in § 70.62(b) do not apply to copies of materials reproduced for the purpose of distribution to the public without charge or to copies of published materials available for purchase from the Superintendent of Documents which the Department makes available in single copies or in limited quantities without charge to persons whose access to such materials may serve the public interest and assist the Department in administering statutes or carrying out programs for which it is responsible.

§ 70.67 Waiver or reduction of fees by disclosure officer.

In appropriate circumstances the disclosure officer may waive or reduce fees otherwise applicable under § 70.62 for services in searching for and copying record information. Thus, where no major expenditure of staff time or burden on reproduction facilities is involved, single copies of disclosable documents readily accessible in Departmental files may be furnished without charge to persons properly and directly concerned with the matters therein (e.g., where an individual seeks a copy of a record pertaining to Departmental action or reference material directly concerning that individual), and to persons in special circumstances where inability to pay is demonstrated and it is clear that a significant public interest would be served by providing the service free of charge. Similarly, searching and copying services may be performed at a reduced charge determined by the disclosure officer to be justified by the public interest in disclosure of a requested record (see § 70.65) or by the benefit to the public that may accrue from dissemination of information likely to assist the Department in carrying out a statutory program.

AUTHENTICATION; SPECIAL STUDIES AND COMPILATIONS

§ 70.68 Authentication of copies.

(a) *Fees.* The Freedom of Information Act does not require certification or attestation under seal of copies of records furnished in accordance with its provisions. Pursuant to provisions of the general user-charger statute, 31 U.S.C. 483a and Subchapter II of Title 29 of the United States Code, the following charges will be made where such services are requested:

(1) For certification of true copies, each $1.

(2) For attestation under the seal of the Department, each $3.

(b) *Authority and form for attestation under seal.* Authority is hereby given to any officer or officers of the Department of Labor designated as authentication officer or officers of the Department to sign and issue certificates of authentication under the seal of the Department of Labor. The form of authentication shall be as follows:

I hereby certify, that ——————— who signed the foregoing attestation, is now and was at the time of signing (title) ——————— and has legal custody of the official documents of the U.S. Department of Labor therein attested and that full faith and credit should be given to his act as such.

In witness whereof, I, ———————, duly designated by the Secretary of Labor as Authentication Officer of the Department of Labor, have hereunto subscribed my name and caused the seal of the Department of Labor to be affixed this —— day of ———, 19—. ———————

———————

(*Authentication Officer, Department of Labor*)

§ 70.69 Special studies and compilations.

Pursuant to the provisions of Subchapter II of Title 29 of the United States Code (29 U.S.C. 9-9b), the Department may, upon the written request of any person and within the discretion of the Secretary of Labor, undertake special statistical studies relating to employment, hours of work, wages and other conditions of employment, may prepare from its records statistical compilations, and may furnish transcripts of its studies, tables, and other records, upon the payment of the actual cost of such work by the person requesting it. Transcripts of existing records requested and made available under the Freedom of Information Act will be furnished subject to payment of the applicable searching and copying fees as set forth earlier in this subpart. However, services as above described which are not within the contemplation of the Freedom of Information Act and are performed in the discretion of the Secretary of Labor will be charged for on the basis of a computation of actual total cost. Nothing in the Freedom of Information Act is construed to require the compiling of records other than the indexes prescribed by 5 U.S.C. 552(a)(2) or the preparation of documents other than those required by 5 U.S.C. 552(a)(1) to be published in the FEDERAL REGISTER.

Subpart C—Special Rules Applicable to Certain Specific Records

§ 70.71 Authority of agency officials in Department of Labor.

Each agency of the Department of Labor for which an officer or officers have authority to issue rules and regulations may through such officers promulgate supplementary regulations, not inconsistent with this part, governing the disclosure of particular or specific records which are in the custody of that departmental unit. Agencies of the Department which do not or have not promulgated special supplementary regulations governing disclosure of particular records shall disclose such records pursuant only to the provisions of Subparts A and B of this Part 70.

§ 70.72 Supplementary regulations currently in force.

Duly promulgated regulations currently in force governing the disclosure of records in the custody of a subdivision of the Department shall continue to be operative insofar as such regulations are consistent with the provisions of this part. Agencies of the Department which have promulgated supplementary regulations or to which special regulations apply are listed in this subpart. Disclosure by such agencies of records not subject to such regulations shall be governed by the provisions of this Part 70.

§ 70.73 Bureau of Labor Statistics.

(a) The records described in paragraph (b) of this section are in the custody of the Bureau of Labor Statistics at the address indicated. The right of inspection and copying provided in this Part 70 may be exercised at that office. See § 70.77(b) concerning rules specially applicable to the disclosure of statistical information compiled by the Bureau pursuant to the Williams-Steiger Occupational Safety and Health Act of 1970.

(b) Collective bargaining agreements and other available agreements and actions thereunder settling or adjusting labor disputes, maintained by the Department of Labor pursuant to section 211(a) of the Labor-Management Relations Act of 1947 (61 Stat. 156; 29 U.S.C. 181); other available statistical information, tables, studies, and reports, collected, collated, and published or reported by the Bureau of Labor Statistics pursuant to the provisions of title 29, chapter I of the United States Code. As required by the governing statute and as provided in § 70.21, requests to inspect or copy any such document shall be denied with respect to any specific information submitted to the Department in confidence.

Address: U.S. Department of Labor, Bureau of Labor Statistics, General Accounting Office, 441 G Street NW., Washington, D.C. 20210.

§ 70.74 Employment Standards Administration.

(a) Records relating to compensation claims under statutes administered by the Employment Standards Administration for work injuries to employees and for detention benefits under the

War Hazards Act may be made available for inspection as provided in 20 CFR 1.22, 31.22, 41.21, 51.1, 61.19, 81.1, and 91.1, and for copying as provided in Subpart B and the supplemental rules in 20 CFR 1.22.

(b) Special supplementary regulations governing the disclosure of records respecting the certification of eligibility to apply for workers assistance under the Trade Expansion Act of 1962 (76 Stat. 872; 19 U.S.C. 1801) and Executive Order 11075 (28 FR 473) may be found in §§ 90.18-19 of this title. The proceedings and reports of advisory committees established under the Trade Act (88 Stat. 1996; 19 U.S.C. 2155) may, as provided in Section 135(f)(2) of that Act, be nondisclosable whenever and to the extent it is determined in accordance with law that such meetings will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions on the negotiation of any trade agreement.

(c) The disclosure of records in the custody of the Office of Federal Contract Compliance or its Compliance Agencies shall be governed by the supplementary regulations published as new Part 60-40 of Title 41 of the Code of Federal Regulations. These will be rescinded or modified in the near future so as to conform to the Freedom of Information Act Amendments of 1974.

(d) The regulations of the Office of Workers' Compensation Programs relating to release of information, which will appear in the near future in the FEDERAL REGISTER under Title 20, Chapter I, Part 10, with reference to the Federal Employees' Compensation Act, as amended; at 20 CFR 702.112-702.114 with reference to the Longshoremen's and Harbor Workers' Compensation Act, as amended and extended; and at 20 CFR 715.301 with reference to the Black Lung Benefits Program.

§ 70.75 Labor-Management Services Administration.

(a) The following documents are in the custody of the Office of Labor-Management Standards Enforcement at the address indicated below, and the right of inspection and copying provided in this Part 70 may be exercised at such offices:

(1) Data and information contained in any report or other document filed pursuant to Sections 201, 202, 203, 211, and 301 of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 524-528, 530, 79 Stat. 888; 29 U.S.C. 431-433, 441, 461).

(2) Data and information contained in any report or other document filed pursuant to the reporting requirements of Part 204 of this title, which are the regulations implementing Executive Order 11491. The reporting requirements are found in Part 204, of this title, § 204.3.

Address. U.S. Department of Labor, Office of Labor-Management Standards Enforcement, Public Documents Room N5626, 200 Constitution Avenue, NW., Washington, D.C. 20210.

(b) Upon request of the Governor of a State for copies of any reports or documents filed pursuant to Sections 201, 202, 203, 211 of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 524-528, 79 Stat. 888; 29 U.S.C. 431-433, 441), or for information contained therein, which have been filed by any person whose principal place of business or headquarters is in such State, the Office of Labor-Management Standards Enforcement shall:

(1) Make available without payment of a charge to the State agency designated by law or by such Governor, such requested copies of information and data, or;

(2) Require the person who filed such reports and documents, to furnish such copies or information and data directly to the State agency thus designated.

(c) The following documents are in the custody of the Office of Employee Benefits Security at the address indicated below, and the right of inspection and copying provided in this Part 70 may be exercised at such offices:

(1) Copies of the description of welfare or pension benefit plans, amendments or modifications thereto and entire or individual pages of annual financial reports thereon, filed pursuant to section 8(b) of the Welfare and Pen-

sion Plans Disclosure Act (72 Stat. 1002, 29 U.S.C. 307).

(2) Copies of plan descriptions, annual reports statements and other documents filed pursuant to the Employment Retirement Income Security Act, Title 1, part 1, except that information described in section 105(a) and 105(c) with respect to a participant may be disclosed only to the extent that information respecting that participant's benefits under Title II of the Social Security Act may be disclosed under such Act.

Address. U.S. Department of Labor, Office of Employee Benefits Security, Public Documents Room N4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

[40 FR 7266, Feb. 19, 1975, as amended at 40 FR 27446, June 30, 1975]

§ 70.76 Employees' Compensation Appeals Board.

In matters before the Employees' Compensation Appeals Board the Board shall make available, or deny access to, records in the proceedings to employees or their attorneys, or in case of death, to their beneficiaries or authorized representatives, in compliance with standards set out in 20 CFR 501.8.

§ 70.77 Occupational Safety and Health Administration.

(a) Supplementary regulations governing the disclosure of records in the custody of the Occupational Safety and Health Administration pursuant to the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590; 29 U.S.C. 651) have been published in Part 1913 of this title. These will be rescinded or modified in the near future so as to conform to the Freedom of Information Act Amendments of 1974.

(b) Disclosure of statistical information compiled by the Bureau of Labor Statistics pursuant to the Williams-Steiger Occupational Safety and Health Act of 1970 shall be governed by the supplementary regulations referred to in paragraph (a) of this section. These will be rescinded or modified in the near future so as to conform to the Freedom of Information Act Amendments of 1974.

PART 70a—PROTECTION OF INDIVIDUAL PRIVACY IN RECORDS

Sec.

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AUTHORITY: Sec. 3(f), Privacy Act of 1974 (5 U.S.C. 552a(f), 88 Stat. 1896, 1900); 5 U.S.C. 553 unless otherwise noted.

SOURCE: 42 FR 6106, Feb. 1, 1977, unless otherwise noted.

§ 70a.1 Purpose and scope.

(a) *Purpose.* This part sets forth the basic criteria which are to be used for implementing the provisions of the Privacy Act of 1974 (Pub. L. 93-579) as it applies to the Department of Labor.

(b) *Scope.* (1) Except as noted in paragraphs (b) (2) and (b) (3) of this section, the regulations set forth in this part apply whenever a record containing personal information is maintained within a system of records which is under the control of the Department and such records are retrieved by reference to a personal identifier.

(2) Requests for notification, access or amendment to personnel records maintained by the Department are governed by Parts 293 and 297 of the Civil Service Commission's regulations, Title 5, Code of Federal Regulations, and internal Department directives established pursuant to the Commission's regulations.

(3) For systems of records contained within government-wide systems of records under the control of the De-

partment of Labor, the regulations of the agency in possession of such records shall govern the procedure for requesting access to, or amendment of the records, including initial determinations on such requests, while the Department of Labor regulations shall govern all other aspects of safeguarding these records established by the Privacy Act.

§ 70a.2 Definitions.

For purposes of this part: (a) "Agency" means an agency as that term is defined in 5 U.S.C. 552(e). It means "each authority of the Government of the United States, whether or not it is within or subject to review by another agency * * *" (5 U.S.C. 551(1)), but it does not include an advisory committee.

(b) The term "individual" means a citizen of the United States (as defined in 8 U.S.C. 1401) or an alien lawfully admitted for permanent residence. This definition distinguishes between the rights which are given to a citizen as an individual under this Act and the rights of proprietorships, including sole proprietors, businesses, and corporations, which are not covered by the Act. Records relating solely to nonresident aliens are excluded from the requirements of this part. However, where a system of records relates to both citizens and nonresident aliens, those portions of the system which relate to citizens or resident aliens must comply with the provisions set forth in these regulations.

(c) The term "maintain" includes the maintenance, collection, use, or dissemination of records, or any combination of these recordkeeping functions. The term "maintain" also connotes control over and responsibility and accountability for a system of records. Effective control of a system of records does not necessarily require physical control of the system (e.g., the Civil Service Commission has control over personnel records not physically within its possession). Furthermore, records on loan from one agency to another may not necessarily be under the control of the latter depending upon the circumstances attendant to, and the conditions of the transfer. Systems of records operated under contract, or in some instances, operated by State or local governments under Federal mandates "by or on behalf of the agency * * * to accomplish an agency function" are, for purposes of this part, under the control of the agency for which the services are being performed, and consequently subject to the requirements set forth in this part. The qualifying phrase "to accomplish an agency function" limits the applicability of the Act to those systems directly related to the performance of Federal agency functions by excluding from its coverage systems which are financed, in whole or in part, with Federal funds, but which are managed by State or local governments for the benefit of State or local governments.

(d) The term "record" means a tangible or documentary record, as opposed to an intangible record, such as information contained in a person's memory. It is any item of information, or any grouping of such items of information, about an individual that includes an identifying particular (i.e., an individual identifier). An "identifying particular" is any element of data (name, number, etc.) or other descriptor (finger print, voice print, photograph) which can be used to identify an individual.

(e) The term "system of records" means a group of any records under the control of an agency from which information is retrieved by reference to the name of an individual or by some identifying particular assigned to an individual. A "system of records" for purposes of this part is a group of records which:

(1) Consists of records as that term is defined in this section,

(2) Are "under the control of" an agency, and

(3) Are retrieved by reference to an individual name or some other personal individual identifier.

"Under the control of" means those official records for which the agency is officially responsible and either has in its possession or exercises dominion over. This excludes those records which, although in the physical possession of agency employees and used by them in performing official functions, are not, in fact, agency records.

Uncirculated personal notes, papers and records which are retained or discarded at the author's discretion and over which the agency exercises no dominion or control (e.g., personal telephone lists) are not "agency records" for purposes of this part.

The criteria "are retrieved by" covers those records under the control of an agency which are, in fact, accessed by use of a personal identifier, not merely that a capability or potential capability exists for retrieving personal information in some manner. For example, files on firms which contain personal information about officers of the firms are not records for purposes of this part unless the agency actually retrieves this information by reference to a personal identifier.

(f) The term "statistical record" means a record contained within a system of records which is maintained for statistical research or reporting purposes only, and not used, in whole or in part, in making any determination about an identifiable individual. For a record to qualify as a "statistical record," it must be maintained as a system of records separately from other systems of records where such other systems contain records that are used to make determinations about the rights, benefits, or entitlements of an identifiable individual. The term "identifiable individual" distinguishes determinations about specific individuals from determinations about aggregates of individuals. An example of the latter is the use of census data for the apportionment of funds based upon population.

Records frequently referred to as "research records" which are only used for analytic purposes, qualify as "statistical records" for purposes of this part, provided such records are not used in making any determination about the rights, benefits or entitlement of an identifiable individual.

(g) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected. The Privacy Act restricts the use of information to such purposes, but also recognizes that there are corollary purposes "compatible with the purpose for which the information was collected" that are appropriate and necessary for the efficient conduct of government, and are in the best interest of both the individual and the public. Thus, the term "routine use" includes the common and ordinary applications for which such records are generally collected and all proper and necessary applications of records without regard to the frequency of such applications.

(h) "Disclosure officer," "responsible official" and "officer authorized to disclose information from Department records" are those officials in this Department, whose titles and addresses are listed in § 70a.4(ii) of this chapter, who must pass on requests to inspect or copy record information in their custody. The solicitor of Labor, in the case of appeals and with respect to withdrawal of originals is the disclosure officer for such purposes, as is the Secretary of Labor with respect to the withdrawal of originals. As the head of the Department, the Secretary may invest any officer or employee of the Department with the authority to disclose information from particular records.

§ 70a.3 Conditions of disclosure of information.

(a) Nothing in this part shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(b) Exempt as provided in paragraphs (d) through (f) of this section, neither the Department, nor its component units, shall disclose any record which is contained within a system of records subject to the requirements of this part, to any person or agency other than to the individual who is the subject of the record, unless the disclosure is to such person's parent or guardian as provided in § 70a.5 (c) of this part, or to the representative designated by such individual in accordance with the requirments contained in § 70a.5(b) of this part.

(c) If a requester satisfied the requirements set forth in §§ 70a.4 and 70a.5 of this part, and the record described in paragraph (b) of this section does in fact exist, and is not otherwise exempt from disclosure by any other provision contained in this part, the record shall be made available to the requester in accordance with § 70a.6 of this part.

(d) Upon the notarized written consent of an individual to whom a record described in paragraph (b) of this section pertains, the Department, or any of its component units, may disclose the record to an agency or a person other than the individual to the extent that the individual to whom the record pertains has so consented.

(e)(1) In the absence of written consent from the individual to whom a record described in paragraph (b) of this section pertains, the Department may disclose any such record provided such disclosure is:

(i) To those officers and employees of the Department of Labor who have a need for the information in the performance of their duties;

(ii) Required under the Freedom of Information Act (5 U.S.C. 552);

(iii) For a "routine use" as published in the annual notice in the FEDERAL REGISTER:

(iv) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity under the provisions of Title 13 of the United States Code;

(v) To a recipient who has provided the Department with adequate advance written assurance that the record will be used solely as a statistical research or reporting record, and that the record is to be transferred in a form that is not individually identifiable;

(vi) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(vii) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity authorized by law, provided the head of the agency or instrumentality has made a prior written request to the Department, or a unit component thereof, specifying the particular record and the law enforcement activity for which it is sought;

(viii) To either House of Congress, or, to the extent that a matter is within its jurisdiction, any committee or subcommittee thereof; or to any joint committee of Congress or a subcommittee of any such joint committee;

(ix) To the Comptroller General, or any of his authorized representatives in the course of the performance of the duties of the General Acounting Office;

(x) Under an order of a court of competent jurisdiction, in which case the Department shall make reasonable efforts to notify the subject individual of the subpoenaed record when the subpoena of such material becomes a matter of public record; or

(xi) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual (not necessarily the individual to whom the record pertains), if upon such disclosure notification is transmitted to the last known address of the individual to whom the record pertains.

(2) The authority to disclose information without the written consent of the individual does not imply mandatory disclosure. The Department shall continue to consider all relevant factors before authorizing the disclosure of information, including the effect that disclosure would have upon the individual who is the subject of the record.

(f) When a record has been amended or a requested amendment thereto has been denied, and the requester has submitted a memorandum of disagreement, the amended information, or the memorandum of disagreement, must be transmitted to prior recipients as provided in 5 U.S.C. 552a(d)(4) and § 70a.9(f) of this part.

(g) Except as prescribed in paragraphs (d) and (f) of this section, and other provisions of this part related thereto, the regulations contained in this part do not require the disclosure of a record to anyone other than the individual to whom the record pertains.

§ 70a.4 Required procedure with regard to a request by an individual for a record contained within a system of records.

(a)(1)(i) Any individual, regardless of age, desiring to examine or copy records of the Department of Labor which are retrieved in the name of that individual or other identifier personal to that individual shall direct a request to the appropriate official as prescribed in (d) of this section. Any individual desiring to ascertain whether, and to whom the Department has disclosed his or her record or part thereof, or deserving to request an amendment to such record, shall direct a request to the same official.

(ii) When a person is uncertain as to whom the request should be directed, it should be sent to: Deputy Assistant Secretary, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue, N.W. Washington, D.C. 20210.

(2) Requests made in person shall be presented during the Department's normal working hours. When the request is made by mail, a notation should be made on the envelope and conspicuously on the letter indicating that the communication involves a request under the Privacy Act (i.e., "Privacy Act Request").

(b) Each request shall be in writing. It shall state the nature of the action desired and shall be reasonably detailed to permit identification and location of the record in question. so far as practicable, the request should specify the subject matter of the record, the date or approximate date when made, the place where made, the person or office that made it, and any other pertinent identifying details. The requester should also indicate whether he or she wishes to review the record in person or obtain a copy by mail.

(c)(1) The disclosure officer who is responsible for acting upon a request shall, upon receipt thereof, have the date and time the request was received immediately inscribed thereon, and within 10 working days thereafter, acknowledge such receipt to the requester. In addition, the acknowledgement shall indicate the time within which it is anticipated that a determination of the request will be made. Such an acknowledgement, however, is not required when a determination can be made within the 10-day period.

(2) If the description contained in the request is insufficient so that a professional employee who is familiar with the subject area of the request cannot locate the record with a reasonable amount of effort, the officer processing the request shall notify the applicant and, to the extent possible, indicate the additional information required. Every reasonable effort shall be made to assist an applicant in the identification and location of the record or records sought.

(d)(1) The titles of the responsible officials of the various independent agencies in the Department of Labor are listed below. Unless otherwise specified, the mailing address of these officials shall be:

U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210

Chief, Administrative Law Judge.
Chairperson, Employees Compensation Appeals Board.
Benefits Review Board, Julius Miller, Member.
Executive Assistant to the Secretary.
Executive Assistant to the Under Secretary.
Deputy Under Secretary for International Labor Affairs.
Associate Deputy Under Secretary for International Labor Affairs.
Associate Deputy Under Secretary for Trade and Adjustment Policy.
Director, Office of Information, Publication and Reports.
Executive assistant to the Assistant Secretary for Policy, Evaluation and Research.
Deputy Solicitor, Office of the Solicitor.
Assistant Secretary for Administration and Management.
Administrative Information Chief, Division of Management Systems, Bureau of Labor Statistics.
Staff Utilization Chief, Division of Operation, Bureau of Labor Statistics.
Executive Assistant to Deputy Commissioner for Statistical Operations and Processing, Office of Statistical Operations and Processing, Bureau of Labor Statistics.
Assistant Secretary for Labor-Management Relations.
Assistant Administrator for Field Operations, LMSA.
Director, Office of Labor-Management Relations Services.

Director, Office of Labor-Management Policy Development.
Director, Office of Labor-Management Standards Enforcement.
Director, Office of Veterans' Reemployment Rights.
Director, Office of Federal Labor-Management Relations.
Deputy Administrator of Pension and Welfare Benefit Program, Office of Employee Benefits Security.
Director, Office of Administration and Management, LMSA.
Director, Office of Planning, Evaluation and Systems, LSMA.
Director, Office of Personnel Management.
Assistant Director, Office of Personnel Management.
Assistant Regional Director for Labor-Management Services.
Assistant Secretary for Employment Standards, Employment Standards Administration.
Director, Office of Workers' Compensation Programs.
Associate Director for Federal Employees' Compensation.
Associate Director for Longshore and Harbor Workers' Compensation.
Administrator, Wage and Hour Division.
Director, Office of Federal Contract Compliance Programs.
Associate Director, OFCCP, Agency Compliance Divisions I-IV.
Associate Director, OFCCP, Policies, Plans and Programs.
Associate Director, OFCCP, Construction Compliance Division.
Associate Director, OFCCP, Management Support Staff.
Associate Director, OFCCP, Veterans and Handicapped Workers Program Operations Division.
Director, Women's Bureau.
Director, Office of Administrative Management, ESA.
Director, Office of Program Development and Accountability, ESA.
Director, Office of Information for ESA.
Executive Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
Special Assistant for Public Affairs, OSHA.
Director, Office of Federal Agency Safety Programs, OSHA.
Director, Office of Training and Education, OSHA.
Director, Office of Standards Development, OSHA.
Director, Office of Compliance Programming, OSHA.
Director, Office of State Programs, OSHA.
Director, Office of Field Performance Analysis, OSHA.
Director, Office of Employee Self-Inspection and Consultation Programs, OSHA.
Director, Office of Management Data systems, OSHA.
Director, Office of Planning, Evaluation, and Research, OSHA.
Equal Employment Opportunity Officer, OSHA.
Director, Office of Personnel Management, OSHA.
Director, Office of Administrative Management, OSHA.
Director, Office of Financial Management, OSHA.
Director, Office of Publications and Visual Aids, OSHA.
Committee Management Officer, OSHA.
Associate Assistant Secretary for Regional Programs, OSHA.
Associate Assistant Secretary for National Programs, OSHA.
Associate Assistant Secretary for Administrative Programs, OSHA.

(2) The mailing address for the responsible officials in the Employment and Training Administration is the Patrick Henry Building, 601 D Street, NW., Washington, D.C. 20213.

Director, Office of Program and Management Service, USES, Room 8430.
Administrative Officer, USES, Room 8001.
Director, program and Management Services Staff, Office of Comprehensive Employment Development, Room 6000.
Executive Assistant to the Administrator, Office of Comprehensive Employment Development, Room 6000.
Deputy Director, Office of Community Employment Programs, Room 5402.
Special Assistant to the Director, Office of Community Employment Programs, Room 5402.
Program Analyst, Office of Work Incentive Programs, Room 5200.
Manpower Development Specialist, Office of Work Incentive Programs, Room 5118.
Chief, Corpsmember Support, Job Corps, Room 6122.
Manpower Development Specialist, Job Corps, Room 6022.
Deputy Director, Office of National Programs, Room 6402.
Chief, Migrant Workers Service, Office of National Programs, Room 7122.
Chief, Division of Indian and Native American Programs, Office of National Programs, Room 6102.
Chief, Division of National Training Programs, Office of National Programs, Room 6308.
Chief, Division of Contracting Service, Office of National Programs, Room 6406.
Administrator, Office of Policy, Evaluation and Research, Room 9000.
Manpower Analyst, Office of Policy, Evaluation and Research, Room 9424.

Administrator, Bureau of Apprenticeship and Training, Room 5000.
Management Officer, Bureau of Apprenticeship and Training, Room 5434.
Chief, Division of Directives Control, Office of Field Operation, Room 10020.
Program Analyst, Office of Field Operation, Room 10014.
Director, Office of Management Information Systems, Office of Administration and Management, Room 4400.
Supervisory Program Analyst, Office of Administration and Management, Room 4000.
Program Specialist, Unemployment Insurance Service, Room 7326.
Special Assistant to the Director, Unemployment Insurance Service, Room 7000.

(3) The titles of the responsible officials in the field offices of the various independent agencies are listed below. Unless otherwise specified, the mailing addresses for these officials, by regions, shall be:

Region I: J.F.K. Building, Government Center, Boston, Massachusetts 02203.
Region II: 1515 Broadway, New York, New York 10036.
Region III: 3535 Market Street, Philadelphia, Pennsylvania 19104.
Region IV: 1371 Peachtree Street, N.E., Atlanta, Georgia 30309.
Region V: 230 South Dearborn Street, Chicago, Illinois 60604.
Region VI: 555 Griffin Square Building, Griffin and Young Streets, Dallas, Texas 75202.
Region VII: Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106.
Region VIII: Federal Office Building, 1961 Stout Street, Denver, Colorado 80202.
Regional IX: Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102.
Region X: 909 First Avenue, Seattle, Washington 98174.

OFFICE OF THE UNDER SECRETARY, REGIONAL DIRECTORS

OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION AND MANAGEMENT, ASSISTANT REGIONAL DIRECTORS

Assistant Regional Director for Audit. (All Regions.)

OFFICE OF INFORMATION, PUBLICATIONS AND REPORTS

Assistant Regional Director for Regions I-IX.
Region X: Assistant Regional Director for Information, 1321 Second Avenue, Arcade Plaza, Seattle, Washington.
Associate Assistant Regional Director, Federal Building, 300 North Los Angeles Street, Los Angeles, California.

EMPLOYMENT AND TRAINING ADMINISTRATION

Region I: Acting Regional Administrator for Employment and Training, Room 1707.
Region I: Deputy Regional Administrator for Employment and Training, Room 1707.
Region I: Associate Regional Administrator for Administration and Management Services, Room 1712.
Region I. Program Analyst, Room 3724.
Region III: Chief, Division of Administrative Support, Room 13464, Gateway Building, P.O. Box 8796, Philadelphia, Pennsylvania 19101.
Region III: Alien Employment Certifying Officer, Room 13180, Gateway Building.
Region IV: Chief, Manpower Data Systems and Analysis, Room 405.
Region IV: Regional Economist, Room 405.
Region V: Chief, Contract Specialist, 6th Floor.
Region VI: Supervisory Contract Specialist, Room 316.
Region VII: Supervisory Contract Specialist, Room 800.
Region VII: Contract Specialist, Room 800.
Region VIII: Executive Assistant to the Regional Administrator for Employment and Training, Room 16018.
Region IX: Executive Assistant to the Regional Administrator for Administration and Management Services, Room 9062.
Region IX: Contract Specialist, Room 9057A.
Region X: Executive Assistant to the Regional Administrator for Administration and Management Services, Room 1136.
Region X: Associate Regional Administrator for Program and Technical Services, Room 1094.

LABOR-MANAGEMENT SERVICES

Assistant Regional Directors for Labor-Management Services.
Regions II, III, IV, V, VII and IX.

AREA DIRECTORS FOR LABOR-MANAGEMENT SERVICES

1371 Peachtree Street, N.E., Room 303, Atlanta, Georgia 30309.
111 North Calvert Street, Room 203, Baltimore, Maryland 21202.
100 Tremont Street, Room 211, New Studio Building, Boston, Massachusetts 02108.
111 West Huron Street, Room 616, Federal Building, Buffalo, New York 14202.
230 South Dearborn Street, Room 700, Federal Office Building, Chicago, Illinois 60604.
1240 East 9th Street, Room 821, Federal Office Building, Cleveland, Ohio 44199.

P.O. Box 239, Bryan and Ervay Streets, Room 301, Post Office Building, Dallas, Texas 75221.
1961 Stout Street, 2320 Federal Office Building, Denver, Colorado 80202.
234 State Street, Room 1906, Washington Boulevard Building, Detroit, Michigan 43226.
1833 Kalakaua Avenue, Room 601, Honolulu Hawaii 96315.
911 Walnut Street, Room 2200, Federal Office Building, Kansas City, Missouri 64106.
300 North Los Angeles Street, Room 7731, Federal Building, Los Angeles, California.
18350 Northwest Second Avenue, P.O. Box 3750, Norland Branch, Miami, Florida 33169.
110 South Fourth Street, Room 110 Federal Courts Building, Minneapolis, Minnesota 55401.
1808 West End Building, Room 825, Nashville, Tennessee 37203.
9 Clinton Street, Room 305, Newark, New Jersey 07102.
600 South Street, Room 940, Federal Office Building, New Orleans, Louisiana 70130.
26 Federal Plaza, Room 1751, New York, New York, 10007.
600 Arch Street, Room 4256, Federal Office Building, Philadelphia, Pennsylvania 19106.
1000 Liberty Avenue, Room 1436, Federal Office Building, Pittsburgh, Pennsylvania 15222.
210 North Twelfth Boulevard, Room 570, St. Louis, Missouri 63101.
100 McAllister Street, Room 1604, San Francisco, California 94102.
605 Condado Avenue, Room 704, Condominio San Alberto, Santurce, Puerto Rico 00907.
506 Second Avenue, Room 3391, Smith Tower Building, Seattle, Washington 98104.
1111 20th Street. NW. P.O. Box 19257, Room 509 Vanguard Building, Washington, D.C. 20036.

THE EMPLOYMENT STANDARDS ADMINISTRATION

Assistant Regional Administrator for Wage and Hour Division: All Regions.
Assistant Regional Administrator for Office of Federal Contract Compliance Programs: All Regions.
Assistant Regional Administrator for Women's Bureau: All Regions.
Assistant Regional Administrator for Program Development and Accountability: All Regions.

OFFICE OF WORKERS' COMPENSATION PROGRAMS—DEPUTY COMMISSIONER

147 Milk Street, Boston, Massachusetts 02109.
1515 Broadway, New York, New York 10036.
3535 Market Street, Philadelphia, Pennsylvania 19104.
Charles Center South, 31 Hopkins Plaza, Baltimore, Maryland 21201.
Stanwick Building, 3661 Virginia Beach, Boulevard, East Norfolk, Virginia 23502.
400 West Bay Street, Box 35049, Jacksonville, Florida 32202.
Federal Office Building, 600 South Street, New Orleans, Louisiana 70130.
2320 LaBranch Street, Houston, Texas 77004.
1240 East Ninth Street, Room 879, Cleveland, Ohio 44199.
230 South Dearborn Street, Chicago, Illinois 60604.
1910 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106.
1531 Stout Street, Room 303, Denver, Colorado 80202.
450 Golden Gate Avenue, Box 36022, San Francisco, California 94102.
Federal Office Building, 909 First Street, Seattle, Washington 98174.
1833 Kalakaua Avenue, Room 610, Honolulu, Hawaii 96315.
McLachlen Building, Room 405, 616 11th Street, N.W., Washington, D.C. 20211 (FECA).
812 Connecticut Avenue, N.W., Washington, D.C. 20211 (DCCA).
Director, Condominio San Alberto Building, 7th Floor, 120 Ponce de Leon Avenue, Santurce, Puerto Rico 00907.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Director, OSHA Training Institute, 10600 West Higgins Road, Rosemont, Illinois 60018.

ASSISTANT REGIONAL DIRECTORS

Region I, 18 Oliver Street, Boston, Massachusetts 02110.
Regions II, III, IV, V, VI, VII, VIII and IX.
Region X, 1803 Smith Tower Building, 506 Second Avenue, Seattle, Washington 98104.

AREA DIRECTORS

Custom House Building, Room 703, State Street, Boston, Massachusetts 02109.
Federal Building, Room 426, 55 Pleasant Street, Concord, New Hampshire 03301.
Federal Building, Room 617B, 450 Main Street, Hartford, Connecticut 06103.
U.S. Post Office and Courthouse Building, 436 Dwight Street, Room 501, Springfield, Massachusetts 01103.
370 Old Country Road, Garden City, L.I., New York 11530.
90 Church Street, Room 1405, New York, New York 10007.

970 Broad Street, Room 1435C, Newark, New Jersey 07102.
605 Condado Avenue, Room 328, Santurce, Puerto Rico 00907.
Midtown Plaza, Room 203, 700 East Water Street, Syracuse, New York 13210.
Railway Labor Building, Room 411, 400 1st Street, N.W., Washington, D.C. 20210.
Federal Building, Room 1110A, Charles Center, 31 Hopkins Plaza, Baltimore, Maryland 21201.
Charleston National Plaza, 700 Virginia Avenue, Room 1726, Charleston, West Virginia 25301.
Jonnet Building, Room 802, 4099 William Penn Highway, Monroeville, Pennsylvania 15146.
William J. Green, Jr., Federal Building, Room 4456, 600 Arch Street, Philadelphia, Pennsylvania 19106.
Federal Building, Room 8015, P.O. Box 10186, 400 North 8th Street, Richmond, Virginia 23240.
Todd Mall, 2047 Canyon Road, Birmingham, Alabama 35216.
1710 Gervais Street, Room 205, Columbia, South Carolina 29201.
Bridge Building, Room 204, 3200 East Oakland Park Boulevard, Ford Lauderdale, Florida 33308.
57601-55 North Frontage Road East, Jackson, Mississippi 39211.
Art Museum Plaza, Suite 4, 2809 Art Museum Drive, Jacksonville, Florida 32207.
600 Federal Place, Suite 554-E, Louisville, Kentucky 40202.
Riverside Plaza Shopping Center, 2720 Riverside Drive, Macon, Georgia 31204.
Commerce Building, Room 600, 118 North Royal Street, Mobile, Alabama 36602.
1600 Hayes Street, Suite, 302, Nashville, Tennessee 37203.
Federal Office Building, Room 406, 310 New Bern Avenue, Raleigh, North Carolina 27601.
Enterprise Building, Suite 204, 6605 Abercon Street, Savannah, Georgia 31405.
650 Cleveland Street, Room 44, Clearwater, Florida, 33515.
Building 10, Suite 33, La Vista Perimter Office Park, Tucker, Georgia 30084.
230 South Dearborn Street, 10th Floor, Chicago, Illinois 60604.
Federal Office Building, Room 4028, 550 Main Street, Cincinnati, Ohio 45202.
Federal Office Building, Room 847, 1240 East 9th Street, Cleveland, Ohio 44199.
360 South 3rd Street, Room 109, Columbus, Ohio 43215.
Michigan Theatre Building, Room 626, 220 Bagley Avenue, Detroit, Michigan 48226.
U.S. Post Office and Courthouse, 46 East Ohio Street, Room 423, Indianapolis, Indiana 46202.
Clark Building, Room 400, 633 West Wisconsin Avenue, Milwaukee, Wisconsin 53203.
110 South 4th Street, Room 437, Minneapolis, Minnesota 55401.
Federal Building, Room 302, 421 Gold Avenue SW., P.O. Box 1428, Albuquerque, New Mexico 37103.
Adolphus Tower, Suite 1820, 1412 Main Street, Dallas, Texas 75202.
2320 LaBranch Street, Room 2118, Houston, Texas 77004.
Federal Building, Room 421, 1205 Texas Avenue, Lubbock, Texas 79401.
Donaghey Building, Room 526, 103 East 7th Street, Little Rock, Arkansas 72201.
546 Carodelet Street, Room 202, New Orleans, Louisiana 70130.
Petroleum Building, Room 512, 420 South Boulder, Tulsa, Oklahoma 74103.
1015 Jackson Keller Road, Room 122, San Antonio, Texas 78213.
210 Walnut Street, Room 643, Des Moines, Iowa 50309.
1627 Main Street, Room 1100, Kansas City, Missouri 64108.
113 West Sixth Street, North Platte, Nebraska 69101.
Harney & 16th Street, Room 803, City National Bank Building, Omaha, Nebraska 63102.
210 North 12th Boulevard, Room 554, St. Louis, Missouri 63101.
Petroleum Building, Suite 312, 221 south Broadway Street, Wichita, Kansas 67202.
Petroleum Building, Suite 525, 2812 First Avenue North, Billings, Montana 59101.
Squire Plaza Building, 8527 West Colfax Avenue, Lakewood, Colorado 80215.
U.S. Post Office Building, Room 452, 3501 South Main Street, Salt Lake City, Utah 84101.
Courthouse Plaza Building, Room 408, 300 North Dakota Avenue, Sioux Falls, South Dakota 57102.
1100 East William Street, Carson City, Nevada 89701.
333 Queen Street, Suite 505, Honolulu, Hawaii 96813.
Hartwell Building, Room 401, 19 Pine Avenue, Long Beach, California 90802.
Amerco Towers, Suite 318, 2721 North Central Avenue, Phoenix, Arizona 85004.
100 McAllister Street, Room 1706, San Francisco, California 94102.
Federal Building, Room 227, 605 West Fourth Avenue, Anchorage, Alaska 99051.
121 107th Street, N.E., Bellevue, Washington 98004.
228 Idaho Building, 216 North Eighth Street, Boise, Idaho 83702.
Pittock Block, Room 526, 921S West Washington Street, Portland, Oregon 97205.

DISTRICT SUPERVISORS

Federal Building, Room 503A, U.S. Courthouse, Providence, Rhode Island 02903.
Stanwick Building, Room 111, 3661 Virginia Beach Boulevard, Norfolk, Virginia 23502.

600 Leopard Street, Suite 1322, Corpus Christi, Texas 78401.

§ 70a.5 Requirements for identification of individuals making requests.

(a) To avoid disclosure of information to unauthorized individuals, where an individual requests personal information about himself or herself, and such information is retrieved from a system of records by means of a personal identifier, and the record(s) requested are excluded from mandatory disclosure under the Freedom of Information Act, the following requirements must be met before the disclosure officer releases the relevant information:

(1) When a request is submitted by mail, the signature of the requester shall be notarized;

(2) When a request is made in person, an official photograph accurately depicting the requester, and indicating the requester's name (e.g., government ID, driver's license, college ID, etc., shall be presented to the disclosure officer or his authorized representative, or if an official photograph is not available, a photograph accompanied by a notarization certifying the name of the individual in the photograph.

(b) When a person, other than an officer or employee of the Department with a need to know, requests access to a record about an individual other than himself or herself, then in addition to meeting the requirements set forth in paragraphs (a)(1) and (a)(2) of this section, as applicable, the requester must also provide a notarized letter of consent signed by the individual to whom the record pertains which explicitly authorizes the requester to receive the record. A notarized letter of consent is not required where the requester is a parent or legal guardian, and such person satisfies the requirements set forth in paragraph (c) of this section.

(c) An individual acting as the parent of a minor or the legal guardian of the individual to whom a record pertains shall establish his or her personal identity in the same manner prescribed in either paragraph (a) (1) or (2) of this section. In addition, such other individual shall establish his or her identity in the representative capacity of parent or legal guardian. In the case of the parent of a minor, the proof of identity shall be a certified or authenticated copy of the minor's birth certificate. In the case of a legal guardian of an individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, the proof of identity shall be a certified or authenticated copy of the court's order. A parent or legal guardian may act only for a living individual, not for a decedent.

(d) The disclosure officer may waive the requirements set forth in paragraphs (a), (b) and (c) of this section when he deems such action to be appropriate, and may substitute in lieu thereof, other reasonable means of identification.

§ 70a.6 Disclosure of requested information to individuals.

(a) *Period within which action on request shall be taken.* (1)(i) As soon as possible, and within a period not to exceed 30 working days after receipt of a request made in accordance with §§ 70a.4 and 70a.5 of this part, the officer responsible for acting on the request shall determine that such request is to be granted or denied in whole or in part, and shall thereupon immediately notify the requester of his or her determination and, in the case of a denial, the reasons therefor. The provisions of paragraphs (a) (2) and (3) of this section are applicable when a final determination to grant or deny the request cannot be made within the 30-day period.

(2)(i) When, because of unusual circumstances it appears that a determination may not be feasible within the 30-day period, the disclosure officer shall submit in writing to the Solicitor a request for an extension of time. The request for extension shall set forth the reasons why the disclosure officer believes it is not possible to make a determination within the 30-day period. The Solicitor shall determine within 5 working days after receipt of such request whether to grant the extension. "Unusual circumstances" shall include circumstances where a search for a collection of requested records from inactive storage, field facilities or other establishments are required, cases where a voluminous amount of data is involved, instances where information on other individuals must be separated or expunged from the particular record, and cases where consultation with other agencies having a substantial interest in the determination of the request is necessary.

(ii) When the Solicitor agrees that an extension is necessary because of unusual circumstances and grants an extension of time, the officer responsible for acting on the request shall notify the requester in writing within the 30-day period of the extension, the reasons therefor, and the date on which the determination to grant or deny the request is expected to be dispatched. No extension is to exceed 10 working days.

(iii) If the disclosure officer is unable to make a determination with respect to all or part of a request within the 30-day period specified in paragraph (a)(1)(i) of this section, or such extended period as may be permitted, because some or all of the records have not been located or made available for examination and consideration in time to make an informed determination, the officer may, within such period, respond to the request by denying the request as to those records which are not available, with notification to the requester of the reasons therefor, and of the right to appeal the denial pursuant to § 70a.9 of this part. However, the disclosure officer shall make a determination at that time as to those records or portions of records which are available. In such an event, the officer shall advise the requester that the search or examination will be continued and that the denial will be subject to withdrawal, modification, or confirmation by a supplementary determination to be made as soon as processing of the request can be completed. If an appeal is filed from the initial denial, the Solicitor shall act thereon as provided in § 70a.9 of this part.

(b) *Procedure for disclosure of information.* (1) When a determination has been made to grant a request, the requested information shall be made available to the individual within the time period prescribed in paragraph (a) of this section. The record shall be made available to the individual in the manner requested, that is, either by forwarding a copy of the information to him or her, or by making it available for review, unless: (i) It is impracticable to provide the requester with a copy of a record, in which case the requester shall be so notified, and, in addition, be informed of the procedures set forth in paragraph (b)(2) of this section, or (ii) the responsible official has reason to believe that the cost of a copy of a record is considerably more expensive than anticipated by the requester, in which case he or she shall notify the requester of the estimated cost, and ascertain whether the requester still wishes to be provided with a copy of the information.

(2) Where a record is to be reviewed by the requester in person, the disclosure officer shall inform the requester in writing of: (i) The date on which the record will become available for review, the location at which it may be reviewed, and the hours for inspection; (ii) the type of identification that will be required in order for him or her to review the record; (iii) such person's right to have a person of his or her own choosing accompany him or her to review the record; and (iv) such person's right to have a person other than himself or herself review the record.

(3) The record shall be made available for review for as long as the disclosure officer deems appropriate, but in no event for less than 30 days.

(4) Inspection of original records shall be made in the presence of the disclosure officer or such officer's designee.

(c) *Denial of request.* Where it has been determined to deny a request in whole or in part, the individual shall be notified in writing of such a determination. Such notification shall specify the reasons therefor, the name and title or position of the person(s) responsible for the denial, and shall advise the requester of the procedure for appealing such an adverse determination to the Solicitor of Labor.

(d) *Medical records.* When an individual requests medical records concerning himself, which are not otherwise exempt from disclosure, the disclosure officer shall, if deemed necessary, because of possible harm to the individual, advise the individual that records will be provided only to a physician designated in writing by the individual. Upon receipt of the designation, the disclosure officer will permit the physician to review the records or to receive copies of the records by mail, upon proper verification of identity. The determination of which records should be made available directly to the individual and which records should not be disclosed because of possible harm to the individual shall be made by the physician.

(e) *Computerized records.* Where information is stored within one of the Department's computer systems, and it can only be retrieved by creating a new computer program, or modifying an existing program in a manner in which it would not otherwise be modified, thus producing a record not currently in existence, the record is not required to be furnished under the Act.

(f) *Alternative Method for transmitting information.* Whenever a record containing personal information about an individual is to be mailed in response to a request under this part, and the information is of such a nature that the disclosure officer has reasonable grounds for believing that the unauthorized dissemination of such information may be of significant harm to the subject of the record, then such a record shall be sent "Certified Mail, Return Receipt Requested."

§ 70a.7 Request for correction or amendment to a record.

An individual, without regard to his or her age, may request the correction or amendment of any record pertaining to him or her, which is contained within a system of records subject to the requirements set forth in this part, by mailing or delivering a written request in conformity with the requirements set forth in §§ 70a.4 and 70a.5 of this part. In addition, the request must state the information in the record which the requester believes to be unnecessary, inaccurate, irrelevant, untimely, or incomplete, the nature of the amendment desired, and a concise statement of the reasons therefor. All available supporting documents and materials which substantiate the requester's position should be included with the request.

§ 70a.8 Agency review of request for correction or amendment to a record.

(a) Upon receipt of a request to correct or amend a record, which is contained within a system of records subject to the requirements set forth in this part, a determination whether to grant the request shall be made by the proper authority charged with the responsibility of acting upon such requests within the time limits prescribed in § 70a.6 of this part.

(b) Where it is determined that the request shall be granted in whole or in part, (1) the record shall be amended within the time limits prescribed in § 70a.6 of this part, and, in no event, is the record to be disclosed to any party until the amendments are so incorporated; (2) the requester shall be informed that the record has been so amended, and the record shall be made available for his or her review within the time limits prescribed in § 70a.6 of this part, and (3) all prior recipients of the record, of which an accounting is required to be kept, shall be notified as soon as possible of the amendments made to the record.

(c) Where it is determined that the request is to be denied, in whole or in part, the requester shall be so notified in accordance with § 70a.6(c) of this part.

§ 70a.9 Procedures for appeal from initial adverse determination.

(a) *Time within which appeal must be filed.* An applicant whose request for access, copying, amendment or correction of a record has been denied pursuant to this part may file an appeal within 90 days from the date of the denial to the Solicitor of Labor. The appeal shall state, in writing, the grounds for appeal and shall include any supporting statements or arguments. The appeal shall be addressed to the Solicitor of Labor, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. To expedite the processing of the appeal, each such appeal should clearly indicate on the envelope and on the appeal the following: "Privacy Act: Appeal."

(b) *Receipt by Solicitor of appeal; acknowledgment.* Each appeal when received by the Solicitor, shall have the date and time of such receipt inscribed thereon. The Solicitor shall acknowledge the receipt of such appeal in writing.

(c) *Action on appeal.* (1) Action on an appeal shall be taken promptly subsequent to receipt by the Solicitor, and a determination shall be made within 30 working days from receipt thereof. Where the Solicitor determines that a decision cannot be made with the 30-day period, the appellant shall be so notified, however, a decision shall be rendered within 40 days of the initial receipt of the appeal.

(2) On appeal, the Solicitor is authorized to determine de novo, whether the denial of appellant's initial request was proper and in accord with the applicable provisions of the statute and the pertinent regulations. In the event that the denial appealed from is one made by reason of the inability of the responsible official to make an informed determination within the specified time limits, the Solicitor's decision shall take into consideration any supplementary determination made by that official.

(3) In the event that a requester seeks review by a court of the denial of a request without first filing an appeal to the Solicitor as provided in this part, the Solicitor may, unless otherwise ordered by the court, consider such action as the filing of an appeal and issue a decision thereon in accordance with the provisions of this paragraph.

(4) If a decision on an appeal is not made by the Solicitor within the normal or extended period, as applicable under paragraph (c) of this section, the requester shall be deemed to have exhausted his or her administrative remedies and may seek relief as provided in 5 U.S.C. 552a(g). Processing of the appeal shall continue however, until a decision is made thereon, irrespective of whether the requester has invoked such judicial relief.

(d) *Procedure upon determination on appeal.* The Solicitor shall issue a decision in writing granting or denying the appeal, in whole or in part.

(1) *Decision to grant request.* (i) When the Solicitor determines that any portion of a prior request, which has been previously denied, should be granted, he shall indicate to the requester the extent to which he has decided to grant the previously denied request, and shall order the responsible official(s) to take the necessary action consistent with his decision.

(ii) If the Solicitor's decision provides for making available information which had been previously withheld, and the Solicitor has within his possession such information, he shall forward a copy of it to the requester together with his decision, unless the requester has indicated that he or she prefers to review the record in person, in which case the Solicitor shall forward the record to the appropriate official who shall make the record available to the requester within 10 working days.

(iii) If the action required by the Solicitor's decision must necessarily be carried out by a responsible official other than the Solicitor, such action shall be carried out within the following time limits:

(A) If the Solicitor's decision requires a record to be made available for review without amendments thereto, such record shall be made available in the manner initially requested, except as provided in § 70a.6(b)(1) (i) and (ii), within 10 working days of the Solicitor's decision.

(B) If the Solicitor's action requires the amendment of a record, the requester shall be given an opportunity to review the amended record within 15 working days of the Solicitor's decision. All previous recipients of the record, for which an accounting is required, shall be informed of the amendments immediately after the review by the requestor.

(iv) Whenever a record is to be made available to an appellant at the direction of the Solicitor, the responsible agency official shall notify the appellant when the record is available for review.

(2) *Decision to uphold denial.* Where the Solicitor determines that the denial of a request, or a portion thereof, should be upheld, the requester shall be notified: (i) Of the extent to which the denial has been upheld and the reasons therefor; (ii) of his right to file with the agency in possession of the relevant record, a memorandum setting forth the fact that such person believes the record to be erroneous and the reasons therefor; and (iii) that the decision of the Solicitor constitutes the final action by the Department of Labor for purposes of judicial review, and that the Solicitor's decision may be appealed to the District Court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the U.S. District Court for the District of Columbia.

(3) *Disclosure of record where request to amend has been denied on appeal.* Where a request to amend a record has been denied by the Solicitor, and the requester has filed a memorandum pursuant to (d)(2)(ii) of this section taking exception to the Solicitor's decision, upon receipt of such memorandum the responsible agency official shall include the memorandum with the relevant record and, in addition, may also include with such record a memorandum indicating that a request to amend the particular record has been denied both by the agency and by the Solicitor, and the reasons therefor.

(i) In addition, previous recipients of a record, where a request to amend has been denied by the Solicitor, and of which an accounting is required by 5 U.S.C. 552a(c), shall be provided with a copy of the requester's memorandum taking exception to the Solicitor's determination, and a copy of the agency memorandum in support of the determination, if such a memorandum has been prepared.

(ii) Any subsequent disclosure of the subject record shall also be accompanied by the requester's excepting memorandum, and the Government's supportive memorandum, if one has been filed.

§ 70a.10 Solicitation of social security numbers.

(a) Neither the Department nor its component units shall deny to any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his social security number.

(b) The requirement set forth in paragraph (a) of this section shall not apply with respect to the disclosure of a social security number to the Department, or a component unit thereof, for inclusion in systems of records which were in existence prior to January 1, 1975, and such disclosure was required by statute, Executive Order or regulation adopted prior to January 1, 1975, to verify the identity of an individual.

(c) Each component unit of the Department that requests an individual to disclose his social security number shall provide the individual, in writing, with the following information:

(1) The use or uses that may be made of the social security number;

(2) The statute or authority under which the social security number is solicited;

(3) Whether the disclosure of the social security number is mandatory or voluntary; and

(4) The consequences, if any, to an individual should he or she refuse to disclose the number.

§ 70a.11 Fees.

(a) *General.* (1) Pursuant to authority granted by the Privacy Act, the payment of standard charges as set forth in paragraph (b) of this section will, except as otherwise provided in this section, be required of the requester to cover the direct costs of duplicating records requested under this part. No fee shall be assessed to any requester for any cost attributed to the search for and the review of any record.

(2) Circumstances under which copying facilities or services may be made available to a requester without charge, or at a reduced charge, are delineated in paragraph (e) of this section. Where a requester desires the agency to provide such services as certification, authentication, or other

special services not required under the Privacy Act, with respect to requested records, fees in addition to those required for copying will be assessed as set forth in § 70.68 of this Chapter, and as authorized by the general user-charge statute, section 483a of Title 31, United States Code.

(b) *Copying charges*—(1) *Fee schedule for copying of records.* The fees payable pursuant to this section for obtaining requested copies of records which have been made available under this part will be computed on the following basis and subject to the following conditions:

(i) *Standard copying fee.* The standard copying fee is $0.10 for each 8½ by 11 inch page of record furnished. The standard fee is applicable both where the copies are reproduced by the person desiring them, using Government-furnished reproduction equipment, such as coin-operated machines, or where, in the absence of availability of such facilities, the copies are reproduced by agency personnel. This standard fee is also applicable to the furnishing of copies of computer printouts as stated in paragraph (c) of this section.

(ii) *Voluminous material.* If the volume of page copy desired by the requester is such that the reproduction charge at the standard page rate would be in excess of $200, the person desiring reproduction may request a special rate quotation from the Office of the Assistant Secretary for Administration and Management.

(iii) *Limit of service.* Not more than 10 copies of any document will be furnished, unless the requester has received the prior written approval of the Assistant Secretary for Administration and Management.

(iv) *Manual copying by requester.* The Department shall provide facilities for manual copying, without charge, during normal working hours.

(c) *Computerized records.* (1) Information maintained, in whole or in part, in computerized form which is required to be made available under this part, shall be made available as follows:

(i) When there is an existing computer printout, the material shall be made available at the per page rate stated in paragraph (b) of this section for each 8½ by 11 inch page.

(ii) When there is no existing printout of information required to be made available under this part, then the information shall be printed out and made available to the requester in accordance with paragraph (b) of this section.

(d) *Payment of fees*—(1) *Medium of payment.* Payment of the applicable fees as set forth in paragraph (b) of this section shall be made in cash, by U.S. postal money order, or by check payable to the Department of Labor. Postage stamps will not be accepted. Cash should not be sent by mail.

(2) *Advance payment or assurance*—Payment of the known and officially estimated copying fees shall be made or assured to the satisfaction of the disclosure officer prior to the performance of substantial copying services. Where the requester does not know and has no official estimate of the copying costs at the time the request is made, the request should specifically state that whatever costs will be involved pursuant to paragraph (b) of this section will be acceptable, or will be acceptable up to an amount not exceeding a named figure. When it becomes apparent that the duplication cost is going to exceed such named figure, the disclosure office shall notify the requester as required by § 70a.6(b) of this part.

(3) *Adjustment of fees.* Where an estimated fee, paid by the requester in advance, exceeds the fee chargeable under the applicable schedule for the copying services actually performed, the balance will be refunded by the Department. Where the actual fees due for the services are in excess of the estimate, the requester will be required to remit the difference. In cases where the estimated costs required under the fee schedule for responding to a request are such that an advance deposit is deemed necessary, the disclosure officer shall advise the requester of the estimated costs and the need for an advance deposit. In addition, where it appears that the information sought by the requester might be made available at less cost by revision of the request, the disclosure officer shall indicate to the requester that

he or she may confer with knowledgeable Department personnel, if he or she so desires, in order to reformulate the request in a manner which will reduce the fees and meet the needs of the requester.

(4) *Post-copying costs.* The scheduled fees for furnishing copies of records made available pursuant to the Act cover the costs of furnishing the copies at the place of duplication. Where the volume of page copy, or the method of transmittal requested, is such that transmittal charges incurred by the Department are in excess of $1, then the transmittal costs will be added to the copying fees set forth in paragraph (b) of this section, unless, appropriate stamps or stamped envelopes are furnished with the request, or authorization is given for collection of shipping charges on delivery.

(e) *Waiver or reduction of fees.* (1) When the disclosure officer or the appellate officer granting a request for a record determines that the waiver or reduction of the standard charge would be in the public interest, he or she may make the requested record available at no charge or at a reduced charge, whichever he or she deems to be appropriate.

(2)(i) Where a copy of a record is made available for the first time to the subject of the record or an individual designated by the subject person, then the disclosure officer shall assess no fee.

(ii) In addition, where it is determined that a person, because of special circumstances, is unable to pay the fees prescribed in paragraph (b) of this section, and it is clear that the public interest would be served by providing the requested information free of charge, then no fee shall be charged for such information.

(f) *Authentication of copies.* Requirements pertaining to the certification or attestation under seal of copies of records required to be made available under this part are the same as the requirements for authentication of copies of records under the Freedom of Information Act as set forth in § 70.68 of this chapter.

§ 70a.12 Penalties.

(a) *General.* (1) This section sets forth criminal sanctions for three violations of the Act:

(i) Unauthorized disclosure,

(ii) Failure to publish a public notice of a system of records subject to the requirements of this part and the Act, and

(iii) Obtaining access to information under false pretenses.

(2) Paragraphs (a)(1) (i) and (ii) of this section apply to employees of the Department, and pursuant to 5 U.S.C. 552a(m), certain contractor personnel for contracts agreed to on or after September 27, 1975.

(b) *Unauthorized disclosure.* Any officer or employee of the Department, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information, the disclosure of which is prohibited by this part, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any matter to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(c) *Failure to give public notice of a system of records.* Any officer or employee of the Department who willfully maintains a system of records without meeting the notice requirements of section (3)(4) of the Act shall be guilty of a misdemeanor and fined not more than $5,000.

(d) *Obtaining access to information under false pretenses.* Any person who knowingly and willfully requests or obtains any record concerning an individual from the Department of Labor under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

§ 70a.13 Exemptions.

(a) *General exemption*—(1) *General.* Section (j) of 5 U.S.C. 552a permits certain agencies within the Department to promulgate rules in accordance with the requirements of sections 553 (b) (1), (2), and (3) (c) and (e) of Title 5, United States Code, to exempt certain systems of records from all the requirements of the Privacy Act except those set forth in paragraph (a)(3) of this section.

(2) *Systems of records which may be exempt pursuant to the general exemption.* Those types of systems of records which may be exempt from certain provisions of the Privacy Act by virtue of section (j) of 5 U.S.C. 552a are those systems which:

(i) Are maintained by an agency, or a component thereof, which performs as its principal function any activity pertaining to the enforcement of criminal laws, and

(ii) Contain information compiled for the purpose of: (A) A criminal investigation, including reports of informants and investigators associated with an identifiable individual, or (B) identifying individual criminal offenders and alleged offenders, and consists only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status.

(3) *Requirements from which systems are exempt under the general exemption.* Those systems of records which qualify for the general exemption are not subject to any provisions of the Privacy Act, nor any of the provisions set forth in this part, except for the following:

(i) The conditions of disclosure required under paragraph (b) of 5 U.S.C. 552a and § 70a.3 of this part.

(ii) The requirements to account for the disclosure of records and maintain an accounting of such disclosures as set forth in sections (c)(1) and (c)(2) of 5 U.S.C. 552a;

(iii) The requirements prescribed in section (e)(4) of 5 U.S.C. 552a to publish annually in the FEDERAL REGISTER notice of the existence and character of systems of records, except that the procedures for: (A) Identifying a record, (B) gaining access to it, (C) contesting its accuracy, and (D) identifying the source of a record, need not be included in such notice;

(iv) The obligation set forth in section (e)(6) of 5 U.S.C. 552a to check for the accuracy, relevance, timeliness, and completeness of records before disclosing such records to any person other than an agency, or to the public pursuant to the Freedom of Information Act;

(v) The requirement restricting the maintenance of records pertaining to an individual's exercise of his First Amendment rights (See section (e)(7) of 5 U.S.C. 552a);

(vi) The requirement to establish rules governing the development, maintenance and safeguarding of systems of records as prescribed in sections (e)(9) and (e)(10) of 5 U.S.C. 552a;

(vii) The requirement to give notice of any new use or intended use of the information contained within a system of records prior to publication pursuant to section (e)(4)(D) of 5 U.S.C. 552a (See section (e)(11) of 5 U.S.C. 552a); and

(viii) The criminal penalties set forth in section (i) of 5 U.S.C. 552a.

(4) *Procedure required to exempt system of records under general exemption.* In order to exempt a system of records described in paragraph (a)(2) of this section from all of the provisions of the Privacy Act, excluding those provisions set forth in paragraph (a)(3) of this section, a notice must be published in the FEDERAL REGISTER in accordance with the rulemaking provisions set forth in paragraph (a)(1) of this section. Such notice shall include at least the following:

(i) The name of the system of records (i.e., the same name used in the annual notice published pursuant to section (e)(4) of 5 U.S.C. 552a, and

(ii) The specific provisions of the Act, and the regulations, from which it is proposed to exempt the system, and the reasons therefor.

(b) *Special exemption*—(1) *General.* The Department, or its component units, may promulgate rules in accordance with sections 553 (b) (1), (2) and (3) (c) and (e) of Title 5, United States Code, to exempt those types of systems of records described in paragraph (b)(2) of this section from the requirements of the Privacy Act, and the regulations of this part, set forth in paragraph (b)(3) of this section.

(2) *Systems of records which may be exempt under special exemption.* The following types of systems of records may be exempt from those provisions of the Privacy Act, and the corre-

sponding provisions of this part, set forth in paragraph (b)(3) of this section.

(i) *Investigatory material compiled for law enforcement purposes.* (A) Systems of records containing solely investigatory material compiled for law enforcement purposes, other than systems within the scope of paragraph (a)(2) of this section, may be exempt to the extent indicated in paragraph (b)(1). However, if any individual is denied any right, privilege, or benefit, that he would otherwise be entitled to by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(B) The phrase "investigatory material compiled for law enforcement purposes" is the same as that used in exemption (b)(7) of the Freedom of Information Act.

(C) (*1*) The phrase "to the extent that the disclosure of such material would reveal the identity of a source * * *" means that if a record can be disclosed in such a way as to conceal its source, a promise of confidentiality to the source is not sufficient grounds for withholding such a record. In certain cases the contents of records may be such that the identity of the source would be revealed even if the name of the source of other identifying particulars were removed (e.g., where a record contains information that could only have been furnished by one individual known to the subject). In such a case the substance of the record may be withheld to protect the identity of a source and but only to the extent necessary to do so. When any reasonable doubt exists as to whether the disclosure of a record, or a portion thereof, would reveal the identity of a confidential source then such record, or the applicable portions thereof, may be withheld.

(*2*) In no instance is paragraph (b)(2)(i)(C)(1) of this section to be applied in a manner which deprives an individual from learning of the existence of information maintained in a record about him, even though the information may have been received from a "confidential source". The fact of the record's existence and, to the maximum extent feasible, a general characterization of that record must be made known to the individual in every case. Furthermore, this section in no way precludes an individual from ascertaining the substance and source of confidential information, should that information be used to deny him a promotion in a Government job, access to classified information, or some other right, benefit or privilege for which he is entitled to bring legal action, when the Government chooses to base any part of its legal case on that information.

(ii) *Records maintained to provide protective services.* Systems of records maintained in connection with providing protective services to the President of the United States, or to other individuals pursuant to section 3056 of Title 18, United States Code, may be exempt as indicated in paragraph (b)(1) of this section. This exemption pertains to systems, the compilation of which are necessary for assuring the safety of individuals protected pursuant to 18 U.S.C. 3056, but are not within the scope of the law enforcement records exemption set forth in paragraph (b)(2)(i) of this section.

(iii) *Statistical records.* Systems of records consisting of statistical records which are required by statute to be maintained and used solely for statistical research or reporting purposes, and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of Title 18, United States Code, may be exempt as indicated in paragraph (b)(1) of this section. The language, "required by statute to be maintined * * * solely", means that systems of records which qualify for this exemption are those composed exclusively of records, that by statute, are prohibited from being used in any manner associated with the making of a determination about an individual to whom a particular record pertains, not merely that the agency does not use the information for such purposes.

(iv) *Investigatory material compiled for determining suitability for Federal employment.* (A) Systems of records containing only investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment. Federal contracts, or access to classified information may be exempt as indicated in paragraph (b)(1) of this section, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(B) Paragraph (b)(2)(iv)(A) of this section permits, among other things, the exemption of systems of records from the individual access provisions of the Act, and the corresponding provisions of this part, §§ 70a.4 through 70a.9, when disclosure of the records contained therein would cause the identity of a confidential source to be revealed, but only under the following conditions:

(*1*) The material must be maintained only for purposes of determining an individual's qualifications, eligibility or suitability for employment in the Federal civilian service, or on a Federal contract, or for access to classified material. By implication, employment would include appointments to Federal advisory committees or to membership agencies, whether or not salaried;

(*2*) The material must be relevant and necessary for making a judicious determination as to qualifications, eligibility or suitability of an individual for a particular position, and the information must be of such a nature that it can only be obtained by providing assurance to the source that his or her identity will not be revealed to the subject of the record (e.g., for "critically sensitive positions"); and

(*3*) The contents of the record, even with the removal of individual identifiers, would reveal the identity of the source.

(C) Regulations issued by the Civil Service Commission establishing procedures for when a pledge of confidentiality is to be made in order to obtain the information described in paragraph (b)(2)(iv)(A) of this section shall be complied with before this exemption is to be employed.

(D) The compilation of investigatory material with regard to Federal contracts pertains not only to investigatory material collected about individuals being considered for employment on an existing Federal contract, but also to investigatory material compiled to evaluate the capabilities of firms competing for Federal contracts.

(c) *Requirements from which systems of records may be exempt under special exemption.* A system of records which meets the requirements of paragraph (b)(2) of this section need not comply with the following provisions of the Privacy Act and the corresponding requirements set forth in this part:

(1) The requirement to make an accounting of a record available to the individual to whom it pertains at his or her request. (See section (c)(3) of 5 U.S.C. 552a);

(2) The requirement for access to records as set forth in section (d) of 5 U.S.C. 552a and §§ 70a.3 through 70a.9 of this part;

(3) The provisions of section (e)(1) of 5 U.S.C. 552a which restricts the contents of records to only such information about an individual as is relevant and necessary to accomplish the purpose of the agency; and

(4) The provisions of section (e)(4) (G), (H) and (I) of 5 U.S.C. 552a, which require the annual notice of system of records published in the FEDERAL REGISTER to set forth:

(i) The procedures whereby an individual can be notified at his request:

(A) If a system of records contains a record pertaining to him, and

(B) How that person can gain access to any record pertaining to him contained in a system of records, and how he can contest its contents; and

(ii) The categories of sources of records in the system.

(d) *Procedure required to exempt a system of records under special exemp-*

tion. In order to exempt a system of records described in paragraph (b)(2) of this section from the provisions of the Privacy Act set forth in paragraph (b)(3) of this section, and the corresponding provisions of this part, notice of intention to exempt must be published in the FEDERAL REGISTER, and such notice shall meet the requirements prescribed in paragraph (a)(4) of this section. The Department of Labor has published notice of intention to exempt the following record systems:

(1) ESA-18, Farm Labor Contractor Employee Records File is exempt under paragraph 3(k)(2) from paragraphs (c)(3), (d), (e)(4), (6), (h) and (f) of 5 U.S.C. 552a. Disclosure of information would enable subjects of the file to take action to prevent detection of illegal activities and could lead to the intimidation of informants, witnesses or their families. Except for information which would reveal the identity of a confidential source, relevant records will be made available only after a determination has been made based upon the information contained therein.

(2) OASA-3, General Investigation File is exempt under paragraphs (3)(j)(2) and 3(k) (2), (3) and (5) of 5 U.S.C. 552a. Information related to criminal investigations [3(j)(2)] is exempt from the provisions of the Act except for the requirements of paragraphs (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10) and (11), and (i). Disclosure of information could enable the subject of the record to take action to escape prosecution and, in addition, might lead to the intimidation of witnesses, informants or their families. Other material which is exempted under 3(k) (2), (3) and (5) of the Act relates to civil law enforcement investigations, including shared information, files maintained in connection with assisting the U.S. Secret Service to provide protective services to government officials, and investigatory material compiled to determine the suitability, eligibility and qualification of DOL contractors. In the first two instances, the material is exempted from the requirements of paragraphs (c)(3), (d), (e)(4) (G), (H) and (I), and (f) of 5 U.S.C. 552a. Contract investigations are exempt from the provision of (c)(3), (d) and (f). Civil law enforcement material is exempted until such time as a determination is made based upon the information except that information which would reveal the identity of a confidential source will continue to be exempted. Contract information is exempt to the extent that disclosure would reveal the identity of a source when an express pledge of confidentiality has been given or the circumstances indicate that confidentiality has been implied. These exemptions are necessary to preserve the integrity of the investigations and to prevent the intimidation or harassment of informants, witnesses or their families.

(3) LMSA-1, Index Cards, Division of Enforcement relates to investigations under the Labor-Management Reporting and Disclosure Act and E.O. 11441. This system is exempt and paragraphs 3(5)(2) and 3(k)(2) of 5 U.S.C. 552a. Material relating to criminal law enforcement [3(5)(2)] is exempted under paragraphs, (b), (c)(1) and (2), (e)(4) (A) through (F); (e) (6), (7), (9), (10) and (11), and (i) of the Act. Disclosure of this material could enable the subject of the record to evade prosecution and could, in addition, jeopardize the safety and welfare of investigators, witnesses, informants and their respective families. Material related to civil law enforcement [3(k)(2)] is exempt from the provisions of paragraphs (c)(3), (d), (e) (4), (6), (H), and (I), and (f) of 5 U.S.C. 552a. Disclosure would enable the subject to take action to prevent detection of illegal activities or avoid the consequences of violation of the law and, further, could lead to the intimidation or harassment of witnesses, informants, or their families.

(4)-(10) [Reserved]

(11) OSHA-1, Discrimination Complaint File is exempt under paragraph (k)(2) of the Privacy Act from paragraphs (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of 5 U.S.C. 552a. Disclosure of information contained in this file could threaten investigators, witnesses, informants and their families with adverse consequences and could hinder effective enforcement of the Occupational Safety and Health Act.

In order to conduct effective investigations it is necessary to guarantee the confidentiality of information being collected. Release of such information would constitute a breach of the guarantee of confidentiality, could lead to the intimidation, harassment or dismissal from employment of those involved, and would discourage those contacted in future investigations from cooperating with investigators.

(e) *Segregation of systems of records.* System of records which may be exempt under paragraphs (a) or (b) of this section shall, to the extent practicable: (1) Be separated from systems of records which are not so exempt, and (2) when it is practicable to exempt only a portion of a system of records, rather than the entire system, then only such portion shall be exempted.

(5 U.S.C. 552a(5), 5 U.S.C. 553, 29 CFR 70a.13)

[42 FR 6106, Feb. 1, 1977, as amended at 43 FR 36070, Aug. 15, 1978]

PART 75—DEPARTMENT OF LABOR REVIEW AND CERTIFICATION PROCEDURES AND RURAL INDUSTRIALIZATION LOAN AND GRANT PROGRAMS UNDER THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT OF 1972

Sec.
75.1 Introduction.
75.11 Standards for the review of applications.

§ 75.1 Introduction.

(a) Section 118 of the Consolidated Farm and Rural Development Act authorizes the Farmers Home Administration (FmHA) of the U.S. Department of Agriculture to make or guarantee loans to finance industrial and business activities in rural areas (broadly defined to include any place with a population of less than 50,000), 7 U.S.C. 1932(d). The Act also permits FmHA to make grants to public bodies for measures designed to facilitate the development of private business enterprises and for pollution control and abatement projects.

(b) As a prior condition for the approval of such loans, guarantees and grants, the Act further specifies that the Secretary of Labor must certify to the Secretary of Agriculture within 60 days after referral, that the loan or grant is not calculated to or likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant and is not calculated to or likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities, to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area. Responsibility within the Department of Labor (DOL) for the review and certification process has been assigned to the Manpower Administration (MA).

(c) The following procedures have been established by the Department of Labor in consultation with the Department of Agriculture for the issuance of labor certifications under this program. These procedures are designed to insure the orderly and expeditious review of the applications, with the objective of complying with the intent of the Congress that most applications will be acted upon by the Department of Labor (DOL) within 30 days after they have been received from the Department of Agriculture. It is anticipated that the procedure will permit completion of all cases within the 60-day legal maximum processing period permitted under the law.

(Sec. 118, Pub. L. 92-419, 86 Stat. 663 (7 U.S.C. 1932))

[40 FR 4394, Jan. 29, 1975]

§ 75.11 Standards for the review of applications.

(a) *Applications to be routinely approved without field review.* The following types of applications will be routinely approved and certified by the Manpower Administration (MA), provided that the required information is submitted by the applicant:

(1) *Loans which involve the change of ownership from one person or group to another or the refinancing of an existing loan.* Provided, That such loans will not result in any transfer from one area to another of any employment or business activity provided by operations of the applicant and are not calculated to or likely to result in an increase in the production of goods, materials, or commodities, or the availability of services, or facilities, to employ the efficient capacity of existing competitive commercial or industrial enterprise. In transmitting such applications to MA, FmHA will include:

(i) A letter of transmittal stating the name and location of the applicant and the amount of the loan, and certifying that the loan is either for the purpose of financing the sale of the business or for the purpose of refinancing a loan and is not calculated to or likely to result in the transfer or expansion of employment or operations:

(ii) Three copies of Form FHA 449-22, Certification of Non-Relocation; and

(iii) Three copies of Form FHA 449-23, Data Information Sheet. MA will issue an affirmative certification on such applications, without further review, within 10 working days.

(2) *Loans of less than $100,000 where the loan proceeds are expected to result in the employment of not more than five workers.* In such instances, the FmHA transmittal letter will call attention to the fact that the application involved falls within this category. This should be supported by data in the revised Forms FHA 449-22 and 449-23 to be forwarded in triplicate to the DOL. For loan applications in this category, the FmHA will also attach a certification signed by the State FmHA director indicating that he has reviewed the loan application and certifying that such a loan is not calculated to or likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant and is not calculated to or likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities, when there is not sufficient demand for such goods, materials, commodities, services, or facilities in the area, to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area. Unless there is other evidence to indicate an adverse effect on unemployment or competitive business enterprises, MA will accept this certificate and accompanying forms as the basis for an affirmative certification without further review and will so certify within 10 working days after receipt.

(3) *Grants where there are no known current or future occupants.* In the case of such applications, e.g., a county's proposal to build an industrial park, FmHA will send a transmittal letter to MA stating the name and location of the applicant, and the amount and purpose of the grant, and certifying that there are no known current or future occupations. FmHA will also forward with the letter a resolution or other statement from the local governing body agreeing to a *prior* review and certification by MA of any person or organization which may occupy all or part of the facility within 3 years from the date of the certification, to insure that the requirements of the Act are being complied with. MA will, within 10 days after receipt of such applications, issue an affirmative certification conditional upon the right of review and certification of each potential occupant within the 3-year period.

(4) *Grants where the occupants are known,* and the improvement will not result in a transfer or increase in operations or employment by the occupants. The FmHA transmittal letter shall provide, in addition to the information specified in paragraph (a)(3) of this section, the names of the occupants and a statement that this grant is not calculated to or likely to result in a transfer or increase in operations or employment. The applicant shall also be required to submit the same type of resolution as that specified in paragraph (a)(3) of this section. On the receipt of such data, MA will issue a certification on the grant application and will certify the known occupants

as well. The certification may require, however, that additional occupants or a change in occupants within the first 3 years after certification is subject to review and a redetermination.

(b) *Applications which will require field or other review.* (1) All loan and grant applications other than those specified in paragraph (a) of this section will be subject to a full review by the MA prior to the issuance of a certification. For each loan application, the FmHA shall submit to MA:

(i) A letter of transmittal stating the name and location of the applicant and the amount of the loan;

(ii) Six copies of the Certificate of Non-Relocation (Form FHA 449-22);

(iii) Six copies of the Data Information Sheet (Form FHA 449-23); and

(iv) Any supplemental information, including A-95 Clearinghouse reports, which FmHA believes may be of value to MA in evaluating the application.

For grant applications, the letter of transmittal shall also provide information about the purpose of the grant. Two copies of a resolution or other statement of the type specified under paragraph (a)(3) of this section shall also be submitted with each grant application.

(2) Upon receipt of applications, MA will review the materials for completeness and will inform FmHA in writing of any missing items within 2 working days after the date of receipt. It is agreed that in such instances the statutory 60-day period will not begin until the file is complete. State Employment Security Agencies will be requested, through the MA regional offices, to provide labor market information needed to determine whether the loan would result in adverse competitive effect upon existing competitive enterprises in the area. Comments will be due in the MA national office 3 weeks after receipt of the request in the MA regional offices.

(3) To assist in the review process, DOL will publish in the FEDERAL REGISTER a weekly listing of applications received (other than those to be routinely certified). The listing will include the name and location (City and State) of the applicant and the principal product or type of business activity. In the case of grant applications, the listing will also include the name and principal product or business activity of the occupant(s) of the facility for which the grant is being made. All interested parties will be afforded a 2-week period from the date of publication to comment in writing to MA. In the event that adverse comments are received, the applicant will be sent copies of such comments by certified mail, and afforded an opportunity to provide such additional information as the applicant deems appropriate within 2 weeks from the date of transmittal. The Farmers Home Administration will also be provided with copies of such adverse comments.

(4) In some instances, involving particularly complex situations, MA may request the Economic Development Administration (EDA) in the Department of Commerce, or other agencies to provide supplemental data. The number of such requests will depend upon the extent to which the DOL is capable of making resources available to EDA or other agencies to perform this function.

(5) When all the data have been assembled, a determination will be made by MA of whether the requested certifications may be certified or denied. FmHA will be notified in writing of the determination. If DOL's investigation indicates the need for additional information, all material will be returned to FmHA with instructions indicating the additional information needed to make a certification. Continuation of the 60-day time limit will begin again when the additional material is returned to Labor.

(6) All denials will be given additional consideration if the applicant or the Department of Agriculture provides additional evidence which they believe merits further consideration. If the DOL reaffirms its denial after a review of all available facts and such additional investigation as it may make, such denial shall be considered as final.

(Sec. 118, Pub. L. 92-419, 86 Stat. 663 (7 U.S.C. 1932))

[40 FR 4394, Jan. 29, 1975]

PART 89—SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

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AUTHORITY: Pub. L. 94-135, sec. 902(b)(2); Stat. 80 stat. 722, unless otherwise noted.

SOURCE: 41 FR 9066, Mar. 2, 1976, unless otherwise noted.

Subpart A—General

§ 89.1 Scope and purpose.

(a) This Part 89 contains the regulations of the Department of Labor for the Senior Community Service Employment Program which is authorized under the Older American Community Service Employment Act, Title IX of the Older Americans Amendments of 1975. The Senior Community Service Employment Program is designed to provide, foster, and promote useful part-time activities for economically disadvantaged persons who are 55 years old or older.

(b) Statutory authority for the regulations contained in this part is found in section 902(b)(2) of Title IX of the Older Americans Amendments of 1975, Pub. L. 94-135.

[41 FR 9066, Mar. 2, 1976; 41 FR 12010, Mar. 23, 1976]

§ 89.2 Allotment of funds.

(a) The Secretary shall allot funds for projects in each State in accordance with the distribution requirements stated in section 906(a) of the Act.

(b) The Secretary may adjust the allotment to a State only as permitted by section 906(b) of the Act.

(c) The amount allotted for projects within a State shall be apportioned among areas within the State in an equitable manner, taking into consideration the proportion which the number of eligible persons in each area bears to the total number of such persons in that State and taking into consideration the relative distribution of eligible individuals residing in rural and urban areas.

§ 89.3 Definitions.

The following definitions consistent with section 907 of the Act apply to all sections of this part:

"Act" means the Older American Community Service Employment Act, Title IX of the Older Americans Amendments of 1975, Pub. L. 94-135.

"Annual family income" means the annual sum of money received by a family which is to be computed in accordance with procedures established by the Department.

"Cash welfare payment" means any regular cash payment provided to a family under Aid to Families with Dependent Children, Supplementary Security Income, or any other regular cash payments provided by a State or local governmental welfare agency.

"Community service" means social, health, welfare, and educational services, legal and other counseling services and assistance, including tax counseling and assistance and financial counseling, and library, recreational, and other similar services; conservation, maintenance or restoration of natural resources; community betterment or beautification; antipollution and environmental quality efforts; economic development; and other types of services which the Secretary may include in a project agreement. It excludes building and highway construction (except that which is normally performed by the project sponsor and work which inures primarily to the benefit of private, profit-making organizations.

"Department" means the United States Department of Labor and includes each of its operating agencies and other organizational units.

"Enrollee" means an individual who is eligible, receives services, and is employed under a project.

"Eligible organization" means an organization which is legally capable of receiving and using Federal funds under the Act and entering into a project agreement with the Secretary. Eligible organizations are limited to:

(1) States and agencies of a State;

(2) units of local government and their agencies and combinations of such units within a State;

(3) public and private nonprofit agencies and organizations other than political parties;

(4) Federal establishments and agencies; and

(5) Native American tribal organizations.

"Host agency" means a public agency or private nonprofit organizations (excluding political parties) other than a project sponsor or subproject sponsor, which provides a work-site and work supervision for project enrollees.

"Local government" means a local unit of government including a county, municipality, city, town, township, local public authority, special district, intrastate district, council of governments, sponsor group representative organization, and other regional or interstate government entity and, for the purposes of Subpart D, includes any agency or instrumentality of a local government, except institutions of higher education, hospitals, and school districts.

"Native American tribal organization", for the purposes of this part, means the governing body of an Indian or Alaskan tribe, band, or group having an identifiable resident population of at least 1,000 persons.

"Project" means an undertaking by a project sponsor pursuant to a project agreement between the Secretary and the project sponsor which provides for the employment of eligible individuals and the delivery of associated services.

"Project agreement" means a legally binding agreement in document form which is a grant, contract, or other form of agreement entered into between the Secretary and an eligible organization and which awards Federal funds and provides for authorized activities under the Act.

"Project sponsor" means an eligible organization which has entered into a project agreement with the Department.

"State" means any of the several State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and, for the purposes of Subpart D, includes any agency or instrumentality of a State, exclusive of institutions of higher education and hospitals.

"Subproject" means a separately identifiable portion of a project which involves the enrollment and employment of eligible individuals and the general administrative and managerial functions associated therewith.

"Subproject agreement" means an agreement entered into between a project sponsor and an eligible organization which provides for the transfer of Federal funds to the eligible organization for the purpose of carrying out a subproject.

"Subproject sponsor" means an eligible organization which has entered into a subproject agreement with a project sponsor.

[41 FR 9066, Mar. 2, 1976, as amended at 43 FR 28468, June 30, 1978]

Subpart B—Award of Federal Funds

§ 89.5 General.

(a) The Secretary may make such grants, contracts, or other agreements to award Federal funds to eligible organizations as may be necessary to carry out the purposes of the Act.

(b) Each grant, contract, or other agreement shall be developed and executed in accordance with the provisions of this Subpart B.

§ 89.6 Soliciting applications for Federal funds.

(a) The Secretary may, at any time, solicit or request eligible organizations to submit applications for funds. The Secretary may limit solicitation to organizations which he determines have special or unique capabilities to undertake a project or which, under the statute, must receive special consideration in the award process.

(b) A solicitation for an application is not an assurance or commitment from the Department that an application will be approved for funding.

(c) In soliciting applications, the Secretary will specify program requirements to which the application must assure adherence as a condition for approval or acceptance. These specifications may include, but are not limited to:

(1) The performance period of the project;

(2) The amount of Federal funds to be awarded, including when necessary a State-by-State breakdown of the total amount;

(3) The minimum required sponsor contribution to the costs of the project; and

(4) Performance goals such as the number of enrollment positions to be established, the date by which all or nearly all enrollment positions are to be filled, and the number of unsubsidized placements to be achieved.

§ 89.7 Application format and content.

(a) When the applicant is a State or unit of local government, exclusive of institutions of higher education and hospitals, the application shall follow the format prescribed in Federal Management Circular (FMC) 74-7, Attachment M.

(b) When the applicant is an organization other than those described in paragraph (a) of this section, the application shall be prepared in the format prescribed by the Department.

(c) As a condition for approval an application for funds must indicate or contain the following:

(1) The performance period of the project;

(2) A project budget for both the Department's share and the sponsor's share which accounts for administrative costs, enrollee wages, enrollee fringe benefits, and other enrollee costs;

(3) A description of the need for the project and its objectives;

(4) A description of the results or benefits to be derived from the project, including benefits which will accrue to project enrollees and benefits which will accrue generally to the community or communities in which the project is to operate;

(5) A description of the methods, procedures, and arrangements which will be used to carry out the following project functions:

(i) Recruitment and selection of enrollees;

(ii) Physical examinations for enrollees;

(iii) Orientation of enrollees;

(iv) Assessment of the job aptitudes, job readiness, and job preferences of enrollees;

(v) Pre-job training for enrollees;

(vi) Development of subsidized employment positions and placement of enrollees into those positions;

(vii) Training for enrollees placed into subsidized employment;

(viii) Supportive services for enrollees;

(ix) Transportation of enrollees;

(x) Placement of enrollees into unsubsidized employment and follow-up on them;

(xi) Due process for resolving issues which might arise between an applicant for enrollment or an enrollee and the project sponsor;

(6) Quantitative performance goals including;

(i) The number of enrollment positions to be established;

(ii) The date by which all, or nearly all, enrollment positions are expected to be filled; and

(iii) The number of unsubsidized placements to be achieved;

(7) A description of the steps to be taken by the project sponsor to evaluate project performance in light of anticipated results and benefits;

(8) A description of how the project sponsor will establish cooperative relationships, liaison, and working linkages with other manpower programs and agencies, with agencies concerned with or experienced in problems of aging, and, if any, with other types of organizations;

(9) A description of and justification for any project activity to be carried out under subproject agreement;

(10) The specific geographic location or locations of project activity including, in cases of multi-State projects, a State-by-State breakout as to funds budgeted and enrollment positions planned;

(11) The project staff structure, including brief position descriptions for nonsecretarial and nonclerical staff;

(12) A description of the arrangements or agreements made with any labor organization which is necessarily concerned with the project; and

(13) When the applicant is an organization other than a State or unit of local government, a description of the general structure of the organization and a certified statement by a Certified Public Accountant attesting to the adequacy of the applicant's financial management system.

§ 89.8 Submitting an application.

(a) Before preparing and submitting an unsolicited application, eligible organizations are strongly encouraged to contact the Department for information concerning the availability of funds and the specific procedures involved in the preparation and submission of an application. In this regard, interested parties should contact.

Director, Office of Comprehensive Employment Development, Room 6000, Patrick Henry Building, 601 D Street NW., Washington, D.C. 20213. Attention: Title IX.

(b) The State and area-wide planning and development clearinghouse notification and review procedures set forth in Office of Management and Budget (OMB) Circular A-95 do not apply to programs under this part.

(c) An eligible organization may submit an application to the Department at any time. The application should be forwarded to the Director of the Office of Comprehensive Employment Development whose address is given in paragraph (a) of this section.

§ 89.9 Review.

(a) The Secretary will review and consider for approval each application which is submitted by an eligible organization. This includes both solicited and unsolicited applications.

(b) In reviewing and considering an application, the Secretary will determine whether:

(1) Funds are available for the proposed project;

(2) The application assures compliance with the requirements of the Act, the regulations promulgated under the Act, and other applicable law;

(3) The application is complete and has been prepared in accordance with the instructions of the Department;

(4) The application assures an effective use of funds consistent with the statute.

§ 89.10 Rejection.

(a) When the review of an application reveals that it is not approvable, the Secretary will notify the applicant in writing that the application is rejected. This notification will include the reason or reasons for rejection.

(b) The rejection of a proposal or application is a final act and is not subject to further administrative review.

(c) A rejection will not prejudice or affect the review and consideration of any future application submitted by an eligible organization.

§ 89.11 Negotiation.

(a) When the review of an application reveals that it is generally adequate, the Secretary may negotiate with the eligible organization to arrive at a project agreement. The subjects of negotiation may include, but are not limited to:

(1) Project components;

(2) Subproject sponsors;

(3) Funding level, including budget line items; and

(4) Performance goals.

(b) The Secretary may reject any proposed project component described in the application if he determines that the component will not serve the purposes of the Act.

(c) The Secretary may, if negotiation does not produce a mutually acceptable conclusion, reject the application. In this event, the Secretary will provide written notification in accordance with § 89.10.

§ 89.12 Award.

(a) The Secretary may, if an application assures an agreement which is advantageous, approve the application and award funds without negotiation.

(b) The Secretary may also approve an application as revised during negotiation.

(c) Award of funds will be accomplished through the execution of a legally binding agreement in document form. The document, which will be prepared by the Department, will contain:

(1) The application as approved by the Secretary; and

(2) Department of Labor requirements for project administration.

(d) When the project sponsor is a unit of State or local government, the Secretary shall use a grant agreement to implement the project and award funds.

(e) When the project sponsor is a nonprofit organization, public or private, other than a unit of State or local government, the Secretary shall use a grant agreement or a contract, whichever is appropriate, to implement the project and award funds. Determination as to the most appropriate of these two legal instruments shall be based, in each case, upon the following general criteria:

(1) The contract is the appropriate instrument when the Department has

a need to exercise considerable direction and control over the project.

(2) The grant is the appropriate instrument when the Department does not need to exercise considerable direction and control over the project.

(f) When the project sponsor is a unit of the Federal Government other than the Department of Labor, the Secretary shall use an interagency agreement, which will be in document form, to implement the project and award Federal funds.

Subpart C—Project Operations

§ 89.15 General.

(a) This Subpart C states the basic guidelines and standards which shall be followed and enforced in the operation of projects under the Act. Adherence to the requirements of this subpart is a condition for the use of funds provided under the Act.

(b) The basic design of a project, as outlined in these guidelines and standards, is intended to provide a two-fold benefit.

(1) *Benefits accruing to eligible persons who enroll in a project.* The persons to be served and enrolled by projects are economically disadvantaged individuals who are 55 years old or older. The basic thrust of a project shall be to provide these individuals with the general benefits resulting from subsidized part-time employment and a moderate level of related supportive services. Specifically, the benefits and services to be provided enrollees are:

(i) Wages;

(ii) The restorative experience of community service work;

(iii) A renewed sense of personal value arising from involvement with the community and the mainstream of life generally;

(iv) The acquisition or revitalization of specific jobs skills through limited pre-job training and continued training on-the-job;

(v) The upgrading of jobseeking skills;

(vi) Yearly physical examination;

(vii) Assistance with personal and job-related problems through counseling and referral to capable human service agencies;

(viii) Provision of important consumer related information in areas such as Social Security benefits, income tax requirements, nutrition, personal health, and so forth; and

(ix) In some cases, placement into the regular, competitive labor market.

(2) *Benefits to communities.* Projects shall also provide the community or communities in which they operate with a Federally subsidized pool of manpower which can be drawn upon to upgrade existing human services or to establish new ones. It is not intended that this pool of manpower be used to displace already employed workers, to provide services or perform work assignments which inure mainly to the benefit of private, profitmaking, organizations, or to construct highways. Projects shall enable communities to enhance or establish human service activities which could not normally be enhanced or established through existing local resources.

§ 89.16 Basic responsibilities of the project sponsor.

The Department will hold the project sponsor responsible for:

(a) Following and enforcing the requirements set forth in the Act, regulations promulgated under the Act, and all other applicable laws;

(b) Implementing and carrying out the project in accordance with the terms and provisions of the project agreement; and

(c) Assuring that, to the extent feasible, the project enrolls and serves minority, Indian, and limited English-speaking eligible individuals in proportion to their numbers within the geographical jurisdiction of the project.

§ 89.17 Cooperative relationships.

Each project sponsor shall, to the maximum extent feasible, establish and maintain cooperative relationships and working linkages with:

(a) Other manpower and manpower related agencies and, in particular, with agencies operating programs through the Department, including State employment security agencies, prime sponsors under title I of the Comprehensive Employment and

Training Act of 1973, and State manpower services councils; and

(b) State and area agencies on aging and with other programs and projects being conducted under the various titles of the Older Americans Act, as amended.

§ 89.18 Recruitment and selection.

Project sponsors shall recruit and select eligible individuals in sufficient numbers for enrollment under the project. All enrollment vacancies shall be listed with the appropriate offices of the State employment security agency. Recruitment efforts shall ensure that enrollment positions within the project are occupied to the fullest extent possible. Also, recruitment efforts shall be made to ensure equitable participation by minorities, Indians and other native Americans and persons with limited English-speaking ability.

§ 89.19 Eligibility for enrollment in a project.

(a) *General.* The eligibility criteria set forth in this section shall be followed by project sponsors in determining the eligibility of persons for enrollment in the project. These criteria apply to:

(1) Individuals who apply for enrollment in a project and who have not previously been enrolled in the project;

(2) Individuals who apply for re-enrollment in a project and whose last previous enrollment was terminated for reasons other than extended illness or placement into unsubsidized employment;

(3) Individuals who apply for re-enrollment in a project and whose last previous enrollment was terminated for reasons of extended illness or placement into unsubsidized employment; and

(4) Individuals actually enrolled in a project.

(b) *Criteria.* The eligibility criteria relate to age, physical and mental capacity, and economic status. The criteria pertaining to age and physical and mental capacity apply to all determinations of eligibility. There are, however, two different criteria which pertain to economic status; and the appropriate criterion must be applied to each situation.

(1) *Age.* To be eligible for enrollment in a project, an individual must be 55 years old or older. No person may be determined ineligible solely for reasons of advanced age, and no upper-age limitation may be used.

(2) *Physical and mental capacity.* To be eligible, an individual must be physically and mentally capable of performing part-time employment duties. Project sponsors are cautioned, however, that unfavorable determinations in this area are to be made with utmost care, since project sponsors may structure employment positions under a project to fit the physical and mental capabilities of the individual enrollees. Unfavorable determinations in this area must be documented to the fullest extent possible with objective material.

(3) *Economic status.* There are two criteria which pertain to the economic status of the individual. The less rigorous criterion (as described in paragraph (b)(3)(ii) of this section) applies to individuals who are actually enrolled in a project and to individuals who apply for re-enrollment under certain extenuating circumstances. The reason for applying a less rigorous criterion to individuals actually enrolled is to prevent a situation in which an individual would be fired merely because his or her nonproject income has risen slightly. Also, individuals who seek re-enrollment after being forced to quit because of extended illness must be treated on a basis equal to individuals actually enrolled. Similarly, equal treatment must be accorded to former enrollees who were placed into unsubsidized employment from a project and were subsequently terminated from that employment, since individuals are encouraged by projects to accept unsubsidized employment.

(i) *Regular economic status criterion.* Applicants for enrollment in a project who have not previously been enrolled in a project and applicants for re-enrollment in a project whose last previous enrollment was terminated for reasons other than extended illness or placement into unsubsidized employment must be members of a family which receives regular cash welfare payments or whose annual income in relation to family size does not exceed 125 per centum of the poverty level determined in accordance with criteria established and updated by the U.S. Office of Management and Budget.

(ii) *Special economic status criterion.* Applicants for re-enrollment in a project whose last previous enrollment was terminated for reasons of extended illness or placement into unsubsidized employment and individuals actually enrolled in a project must be either:

(A) Members of a family which receives regular cash welfare payments; or

(B) Members of a family whose annual income does not exceed by more than $500, 125 per centum of the poverty level determined in accordance with criteria established and updated by the U.S. Office of Management and Budget.

(4) *Employment status—no requirement.* An individual's employment status does not bear on his or her enrollment eligibility. If the individual is employed at the time the eligibility determination is made, but such employment does not provide the family with an economic status above the applicable level set forth in this section, the employment is deemed insufficient for the family's economic needs.

(5) *No additional criteria.* Project sponsors and their agents may not impose any additional condition or requirement for enrollment eligibility.

(c) *Special responsibilities of the project sponsor.* (1) Project sponsors shall obtain the personal information necessary for a proper determination of eligibility for each individual.

(i) The information, which shall be obtained primarily through personal interview, shall be recorded on an adequate client intake or application form.

(ii) The information shall be authenticated by the dated signature of the individual on the client intake or application form. Although project sponsors are responsible for assuring that the required personal information reported by individuals appears reasonably reliable and consistent, project sponsors need not conduct investigations of any individual being considered to ascertain the veracity of the information.

(2) With respect to individuals enrolled in a project, the Department may, from time to time, require the project sponsor to update personal records to indicate the individual's current family income, exclusive of wages earned under the project to determine the eligibility of individuals for continuing enrollment. In such cases, the project sponsor shall require each enrollee to sign and date a written statement which indicates his current annual family income and whether or not the family is receiving regular cash welfare payments. Enrollees who are consequently determined to be ineligible for continued enrollment shall be given one month's notice by the project sponsor that their enrollment is to be terminated.

(3) Project sponsors shall record each determination (preferably on the same form used for client intake or application purposes in cases of prospective enrollees and on an adequate termination form in cases of actual enrollees) by indicating the date, the name and title of the project official who made the determination (with the official's written initials), and the grounds for any unfavorable determination.

(4) If at any time the project sponsor discovers that an individual was incorrectly determined to be eligible as a direct result of false information from that individual, the individual's enrollment shall be terminated immediately.

(5) In cases where an individual was incorrectly determined to be eligible through no fault of his own, the project sponsor shall, when such error is discovered, provide the individual with one month's notice that his enrollment is to be terminated. Similarly, if the project sponsor discovers at any time that an enrollee has received an increment in outside income which is sufficient to make the individual ineligible for continuing enrollment, the project shall provide the individual with one month's notice that his enrollment is to be terminated.

(6) When unfavorable determinations of eligibility are made, the proj-

ect sponsor shall explain to the individual the reason or reasons for the determination. The project sponsor shall inform each individual affected by an unfavorable determination that he or she may appeal the determination pursuant to § 89.31.

(7) When an unfavorable determination of eligibility is made, the project sponsor shall ensure that the individual receives such assistance, short of enrollment in the project, as the project is able to provide. This may include, but is not limited to, referral to a potential unsubsidized employment position, referral to a more appropriate manpower program, referral to the local office of the State employment security agency, and referral to any other local agency which may be capable of assisting the individual.

(Sec. 502(b)(2) of the Older Americans Act of 1965 (42 U.S.C 3056), as amended by the Comprehensive Older Americans Amendments Act of 1978 (Pub. L. 95-478); 5 U.S.C. 553(a)(2))

[41 FR 9066, Mar. 2, 1976, as amended at 43 FR 28468, June 30, 1978; 43 FR 33708, Aug. 1, 1978; 44 FR 29049, May 18, 1979; 44 FR 48201, Aug. 17, 1979]

§ 89.20 Enrollment priorities.

(a) In selecting eligible individuals for entry into the project, the priorities described below shall be observed. The priorities are listed in order of precedence.

(1) *First.* Priority shall be given to individuals who are applying for re-enrollment in the project and whose last previous enrollment was terminated for reasons of extended illness or placement into unsubsidized employment.

(2) *Second.* Priority shall be given to individuals who are the most economically disadvantaged. In determining the severity of an individual's economic situation, project officials responsible for selecting enrollees may consider: The extent to which the individual's annual family income is below the poverty level; the urgency of the family's immediate economic needs including, but not limited to, needed income for subsistence, housing, and medical expenses; and the extent to which financial assistance is being provided to the family from other programs and welfare sources.

(3) *Third.* Priority shall be given to individuals who are 60 years old or older.

(4) *Additional priorities.* Program sponsors may establish additional or supplementary priorities only with the prior written approval of the Department of Labor Contract/Grant Officer. Any additional or supplementary priorities may not, however, take precedence over the priorities listed above.

(b) *Conversion to permanent enrollment status.* The priorities established in paragraph (a) of this section do not apply to the conversion of temporary enrollees to permanent enrollment status. Temporary enrollees must be given first consideration for enrollment on a "permanent" basis whenever a "permanent" position becomes available. Selection for conversion to permanent status must be based solely on the earliest selection for temporary enrollment, i.e., temporary enrollees with the most seniority shall be selected for conversion first. However, selection among eligible individuals for enrollment on a temporary basis shall be made in accordance with the priorities described in paragraph (a) of this section.

§ 89.21 Physical examinations.

(a) Each individual selected for enrollment shall undergo a physical examination prior to taking part in the employment activities under the project.

(b) Each individual enrolled shall undergo a physical examination at least once each year while enrolled in the project.

(c) Project sponsors are encouraged to obtain these medical services through locally available resources at no cost or reduced cost to the project. However, the costs of such examinations are allowable under a project.

§ 89.22 Orientation.

Each individual enrolled in a project shall, as soon as practicable, receive a formal orientation to the project. The orientation shall provide the new enrollee with information about the project related to:

(a) Project objectives;

(b) Available employment opportunities and work assignments;

(c) Available training;

(d) Available supportive services;

(e) The responsibilities of enrollees; and

(f) The rights and privileges of enrollees.

§ 89.23 Assessment.

Project sponsors shall assess each new enrollee to determine the most suitable, available, part-time community service job for the individual. The assessment, which shall be made in consultation with the new enrollee, should consider the individual's job preferences, work history, skills and aptitudes. Every reasonable attempt should be made to decide upon a job position which will be personally rewarding and will provide the individual with an opportunity to make the most effective use of his or her skills and aptitudes.

§ 89.24 Pre-job training.

(a) Project sponsors may provide new enrollees with job-related training prior to and as preparation for their actual placement into productive, subsidized community service work under the project. This training may be delivered through lectures, seminars, classroom instruction, or other arrangements. Project sponsors are encouraged to obtain training services through locally available resources, including host agencies, at no cost or reduced cost to the project.

(b) Pre-job training, combined with time spent in orientation, shall be completed by the 4th week of the individual's enrollment, except when extended periods are specifically authorized in the project agreement or authorized in writing by the Department of Labor Contract/Grant Officer.

(c) Time spent by enrollees in orientation and pre-job training shall be considered as employment under the project and shall be reimbursed at the Federal or State minimum wage, whichever is higher.

§ 89.25 Subsidized employment.

(a) *Placement.* As soon as possible after the completion of an enrollee's orientation and pre-job training (if any), the project sponsor shall place the enrollee into a subsidized, part-time community service job. If possible, however, the project sponsor should place any recent enrollee in an unsubsidized job. Subsidized jobs may be:

(1) Positions which have been created and which are supervised by the project sponsor or subproject sponsor directly; or

(2) Positions which have been developed by or in consultation with a qualifying host agency and which are supervised by the host agency.

(b) *Hours of work.* (1) Subsidized employment positions under a project may not provide for more than 1300 hours of work annually.

(2) Project sponsors may not require any enrollee to work more than 20 hours in a given week.

(3) Unless shorter periods are specifically authorized by the project agreement or in writing by the Department of Labor Contract/Grant Officer, project sponsors shall offer each enrollee an opportunity to work an average of at least 20 hours per week. However, if it is mutually agreeable to the enrollee and the project sponsor, an enrollee may work an average of less than 20 hours per week.

(4) The project sponsor shall, to the extent possible, ensure that enrollees work during normal business hours if they so desire.

(c) *Location.* Enrollees shall be employed at worksites in or near the communities in which they reside.

(d) *Work assignments.* (1) Acceptable work assignments for enrollees are those which contribute to the general welfare of the community. Enrollees may be employed in projects or at facilities which involve community services such as social, health, welfare and educational services, legal and other counseling services and assistance, including tax counseling and assistance and financial counseling, library, recreational, and other similar services; conservation, maintenance or restoration of natural resources; community betterment or beautification; anti-pollution and environmental quality efforts; economic development; and other services which are essential and necessary to the community; except that (i) enrollees may not be employed in projects involving the construction, operation or maintenance of any facility used as a place for sectarian religious instruction or worship, and (ii) enrollees may not be assigned work involving building and construction of highways or to work which inures primarily to the benefit of private, profit-making organizations.

(2) Project sponsors shall give special and demonstrable emphasis to work assignments which involve activities delivering direct services to the low-income elderly and the elderly in general and which deliver direct services to the economically disadvantaged. Furthermore, project sponsors shall, to the extent feasible, give qualified enrollees consideration for work assignments involving the administration of the project.

(e) *Supervision.* Project sponsors shall ensure that enrollees receive adequate orientation and instruction from their worksite supervisors with regard to job responsibilities and duties and job safety. Project sponsors shall ensure that enrollees receive the jobsite supervision necessary for productive, effective work. Where an enrollee has been assigned to a host agency, the project sponsor or his agent shall make frequent visits to the enrollee's jobsite to determine if host agency supervision is adequate and if the enrollee's job duties and hours are in accord with the requirements of this section. The enrollee's work performance shall also be discussed with host agency supervisors to determine if there are any problem areas which the project sponsor might be able to assist in resolving.

§ 89.26 Training after placement.

(a) Project sponsors are encouraged to provide enrollees with continued training after they have been placed into productive, part-time community service work under the project. This training, when it is conducted, should be concerned mainly with teaching and upgrading job skills so that enrollees are enabled to make the most effective use of their talents and abilities. It may also be concerned with teaching of jobseeking skills in preparation for unsubsidized employment and with providing the enrollees with important consumer information in such areas as Social Security benefits, personal health, nutrition, tax requirements, and retirement laws. Such training may be delivered through lectures, seminars, classroom instruction, or through other arrangements. Project sponsors are encouraged to seek and obtain such training services through locally available resources, including host agencies, at no cost or reduced cost to the project.

(b) Training shall be conducted during normal working hours or in lieu of normal working hours. Time spent by an enrollee in training shall be considered as employment under the project and shall be reimbursed at the individual's established rate of pay.

(c) The amount of time spent by an enrollee in training shall be reasonable and consistent in light of the enrollee's work assignment. It is recognized that certain work assignments, such as those of a paraprofessional character, may require considerable and continuous training or technical instruction. For this reason, no arbitrary time limitations for "post-placement" training is imposed on individual enrollees. However, project sponsors should not schedule yearly wage-reimbursable training for their enrollees which exceeds, in the aggregate, 20 percent of the total enrollee manhours to be worked during that year.

§ 89.27 Enrollee supportive services.

(a) Project sponsors shall provide job-related and personal counseling to enrollees to assist them in resolving problems which might adversely affect their successful participation. This assistance shall be offered willingly to enrollees and shall, as a minimum, provide knowledgeable referral to capable, local service agencies.

(b) If not available from local resources, project sponsors may provide enrollees with incidentals necessary for their successful participation, such as: Work shoes, badges, uniforms, safety and eye glasses, and tools.

§ 89.28 Enrollee transportation.

(a) Project sponsors may make arrangements and expend project funds for the transportation of enrollees, provided the transportation is either accomplished in the direct performance of employment or employment-related activities or is accomplished from central pick-up points to worksites in cases where public transportation is inadequate. Project sponsors are encouraged to seek and obtain transportation services for enrollees from local resources at no cost or reduced cost to the project.

(b) When enrollee transportation is accomplished by privately-owned automobile, reimbursement shall be made at the mileage rate currently in effect for Department of Labor staff.

§ 89.29 Placement into unsubsidized employment.

(a) Project sponsors shall work to place enrollees into unsubsidized employment in private or public sector jobs, thereby creating opportunities for additional persons to enroll in and benefit from the project.

(b) The number of enrollees placed annually from a project should equal at least 10 percent of the number of enrollment positions provided by the project.

(c) In pursuing this goal, project sponsors are encouraged to:

(1) Seek the assistance of the local office of the State employment security agency in identifying suitable, unsubsidized job openings and other forms of job-related assistance the agency is capable of providing;

(2) Seek the assistance of other local manpower agencies, including prime sponsors under the Comprehensive Employment and Training Act, in identifying job openings or training opportunities;

(3) Prevail upon host agencies to accept qualified enrollees into their regular, unsubsidized work force; and

(4) Contact public and private employers directly to identify suitable job openings.

(d) Project sponsors shall follow-up on enrollees who are placed into unsubsidized employment or into a job-training program. As a minimum, follow-up shall be accomplished and documented in the first month after placement and once again in the sixth month. If the former enrollee is subsequently discovered to be unemployed, the project sponsor shall grant him or her special consideration, as provided by § 89.20, for reenrollment in the project.

§ 89.30 Duration of enrollment.

No time limitation on enrollment may be established or used within any project.

§ 89.31 Adverse actions against enrollees.

Each project sponsor shall establish procedures for resolving any issue arising between it and an enrollee or an enrollment applicant. Such procedures shall include an opportunity for an informal conference and a prompt determination of the issue. Such procedures shall also include a notice setting forth the grounds for any adverse action proposed to be taken against an enrollee by the project sponsor and giving the enrollee an opportunity to respond. If an issue cannot be resolved, the enrollee or enrollment applicant may request a review of the issue by the Department.

§ 89.32 Enrollee wages.

(a) While engaged in orientation or pre-placement training, enrollees shall be paid the Federal or State minimum wage, whichever is higher.

(b) Upon placement into productive, part-time, community service work under the project, enrollees shall receive wages at a rate no less than the highest of the following:

(1) The minimum wage which would be applicable to the employee under the Fair Labor Standard Act of 1938, if section 6(a)(1) of the Act applied to the participant and if he were not exempt under section 13 thereof;

(2) The State or local minimum wage for the most nearly comparable covered employment; or

(3) The prevailing rate of pay for persons employed in similar public occupations by the project sponsor, the subproject sponsor, or the host agency as appropriate.

(c) Project sponsors may not use Federal funds to compensate enrollees for more than 1,300 hours of work, including orientation and training, in any 12-month period.

§ 89.33 Enrollee fringe benefits.

(a) Within a project or subproject, fringe benefits shall be administered uniformly to all enrollees, including temporary enrollees.

(b) Project sponsors shall ensure that enrollees receive all fringe benefits required by law.

(c) Where enrollees are not covered by the State Worker's Compensation Law, the project sponsor shall provide either through insurance by a recognized carrier, or by self-insurance as allowed by State law, that enrollees enjoy worker's compensation coverage equal to that provided by law for covered employment.

(d) The project sponsor shall ensure that enrollees in positions which are covered by the State Unemployment Insurance laws participate in the State Unemployment Insurance program. To the extent feasible, project sponsors are encouraged to obtain such coverage for enrollees.

(e) The following fringe benefits will be allowable provided they are administered uniformly to all enrollees within a project or subproject and conform to the established policy of the project sponsor or subproject sponsor for regular employees:

(1) Annual leave;

(2) Sick leave;

(3) Holidays;

(4) Health insurance; and

(5) Any other fringe benefit provided pursuant to the established policy of the project sponsor or subproject sponsor for regular employees except as limited by paragraph (f) of this section.

(f) Expenditures from Federal funds into a retirement funds for enrollees may be made only when one or more of the following conditions exist:

(1) When payments into a retirement fund are required by law;

(2) When payments are for retirement benefits that are part of a consolidated package, including other benefits such as health insurance and worker's compensation, if separation of the benefits is not allowed; or

(3) When payments are for enrollees whom the project sponsor or subproject sponsor intends to hire into a permanent, unsubsidized job, *Provided*, That payments on behalf of the enrollee are made into and retained in a reserve account, and not paid into the retirement fund until the enrollee has acquired regular employee status.

§ 89.34 Temporary enrollees.

Where a portion of project funds is not being utilized as a result of enrollee absenteeism, attrition, or enrollees who voluntarily work fewer hours per week than normal, the project sponsor may use these funds during the period of the project agreement by enrolling additional eligible individuals on a temporary basis. The number of temporary enrollees may not, without the written approval of the Department of Labor Contract/Grant Officer, exceed 20 percent of the total number of enrollment positions established under the project agreement. In no case may payments to them exceed the amount of the unutilized funds available. Each person enrolled on a temporary basis must be informed that the employment is of a temporary nature and might be terminated. Project sponsors shall give temporary enrollees first consideration, in the order of their seniority on the project, for permanent enrollment positions when they become available. Project sponsors shall exercise this flexibility judiciously to prevent large numbers of terminations at the completion of a project period.

§ 89.35 Working conditions for enrollees.

No enrollee may be permitted to work in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her health or safety.

§ 89.36 Non-Federal status of enrollees.

Enrollees who are employed in any project funded under the Act are not Federal employees as a result of such employment, and are not subject to the provisions of part III of Title 5, U.S.C.

§ 89.37 Nondiscrimination and equal employment opportunities.

(a) No person shall on the grounds of race, creed, color, handicap (as defined in paragraph (g) of this section), national origin, sex, political affiliation, or beliefs be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any project or activity funded in whole or in part with funds made available under the Act.

(b) When the Secretary determines that a project sponsor has failed to comply with the requirements of paragraph (a) of this section, he shall notify the project sponsor of the noncompliance and request the project sponsor to secure compliance. If the project sponsor fails or refuses to secure compliance, the Secretary may terminate financial assistance under the Act and:

(1) May refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) May, if appropriate, exercise the powers, and functions provided by title VI of the Civil Rights Act of 1964 (42, U.S.C. 2000(d)); or

(3) May take other actions as may be provided by law.

(c) When a matter under this section is referred to the Attorney General, or when the Secretary of Labor believes that a pattern or practice of discrimination exists, the Attorney General may bring a civil action in any appropriate United States District Court, including injunctive relief.

(d) The Secretary shall enforce the provisions of paragraph (a) of this section with regard to discrimination on the basis of sex in accordance with sections 602 and 603 of the Civil Rights Act of 1964.

(e) This section shall not affect any other legal remedy that a person may have if that person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any project or activity receiving assistance under the Act.

(f) The project sponsor shall be responsible for assuring that no discrimination prohibited by this section occurs in any project for which it has responsibility, and shall establish an effective mechanism for this purpose.

(g) The term "handicapped individual" means any individual who (1) has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment, and (2) can reasonably be expected to benefit in terms of employability from an activity under the Act.

(h) Every grant or contract made pursuant to the Act shall contain a certification statement signed by the project sponsor concerning the provision of equal employment opportunity under the project agreement.

§ 89.38 Special limitations on project activities.

(a) No project under this part may involve political activities, and neither the project nor the funds provided therefor, nor the personnel employed in the administration of the project, shall be in any way or to any extent engaged in the conduct of political activities in contravention of Chapter 15 of Title 5, U.S.C.

(b) Participants employed by a State or local government in the administration of the program and participants whose principal employment is with a State or local government and is in connection with an activity financed by other Federal grants or loans are covered by the Hatch Act.

(c) No enrollee in any project under this part may be employed in the construction, operation, or maintenance of part of any facility as is used or will be used for sectarian instruction or as a place of religious worship.

§ 89.39 Nepotism.

No project sponsor, subproject sponsor or host agency may hire a person into a funded position if a member of his or her immediate family is employed in an administrative capacity for the same project sponsor, subproject sponsor or host agency. However, where an applicable State or local law regarding nepotism exists which is more restrictive than this policy, the project sponsor should follow the State or local statute in lieu of this policy. For purposes of this section, the term "member of the immediate family" includes: wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, daughter-in-law, son-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, step-parent and stepchild.

The term "administrative capacity" includes those who have selection, hiring or supervisory responsibilities for project enrollees, or operational responsibility for the project.

§ 89.40 Maintenance of effort.

(a) Employment of enrollees funded under the Act shall be only in addition to employment which would otherwise be funded by the project sponsor, the subproject sponsor, and the host agencies without assistance under the Act.

(b) Projects funded under the Act:

(1) Shall result in an increase in employment opportunities over those which would otherwise be available;

(2) May not result in the displacement of currently employed workers, including partial displacement such as a reduction in hours of non-overtime work, wages, or employment benefits;

(3) May not impair existing contracts for service or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed; and

(4) May not substitute project jobs for existing Federally assisted jobs; and

(5) May not employ or continue to employ any enrollee to perform work the same or substantially the same as that performed by any other person who is on layoff.

§ 89.41 Sponsor share of the costs of the project.

The Secretary will pay not more than 90 percent of the cost of any project which is the subject of an agreement entered into under this part, except that the Secretary is authorized to pay all of the costs of any such project which is (a) an emergency or disaster project or (b) a project located in an economically depressed area as determined in consultation with the Secretary of Commerce and the Director of the Community Services Administration.

§ 89.42 Limitations on Federal funds.

(a) No more than 15 percent of the Federal funds provided to a project sponsor under the Act may be expended for administrative costs. Administrative costs include, but are not limited to salaries, wages and fringe benefits for project administrators; costs of consumable office supplies used by project staff; costs incurred in the development, preparation, presentation, management and evaluation of the project; The costs of establishing and maintaining accounting and management information systems; cost incurred in the establishment and maintenance of advisory councils; travel of project administrators; rent, utilities, custodial services and indirect costs allowable to the project; training of staff and technical assistance to subproject sponsor staff; costs of equipment and material for use by staff; and audit services. Project sponsors may lower these costs by using enrollees in the administration of the project. In such event, wages, fringe benefits, and travel costs for such enrollees shall be charged as enrollee costs.

(b) No less than 70 percent of the Federal funds provided to a project sponsor under the Act may be expended for enrollee wages and fringe benefits. Enrollee wages are the wages paid to enrollees for their hours of employment, including orientation and pre-job training, under the project; and enrollee fringe benefits are the fringe benefits provided to enrollees for their hours of employment, including orientation and pre-job training under the project.

(c) Federal funds provided to a project sponsor under the Act which are not budgeted or expended for administrative costs, enrollee wages and enrollee fringe benefits may be budgeted and expended for enrollee physical examinations (as authorized by § 89.21), enrollee transportation costs (as authorized by § 89.28) and for other enrollee costs including, but not limited to:

(1) Enrollee training costs, including costs for instructors; classroom rental; training supplies, materials, and equipment; tuition; and other costs directly attributable to the training of enrollees;

(2) The costs of special job-related or personal counseling for enrollees; and

(3) The costs of incidentals necessary for successful enrollee participation such as work shoes, badges, uniforms, safety and eyeglasses, and

tools, when these items are unavailable without cost.

(d) No Federal funds provided to a project sponsor under the Act may be expended directly or indirectly for the purchase, erection, or repair of any building except for:

(1) Minor remodeling of a public building necessary to make it suitable for use by project administrators;

(2) Minor repair and rehabilitation of private residences performed in conjunction with local public housing programs intended to benefit low-income families or individuals; and

(3) Minor repair and rehabilitation of publicly used facilities performed to beautify, improve or restore the facilities to the general betterment of the community.

(e) Within the limitations stated in paragraphs (a) through (d) of this section, no Federal project funds may be expended for purposes other than those permitted by the applicable Federal cost principles.

(1) The cost principles in Subpart 1-15.7 of Title 41 of the Code of Federal Regulations apply to project sponsors which are units of State or local government.

(2) The cost principles in Subpart 1-15.3 of Title 41 of the Code of Federal Regulations apply to project sponsors which are institutions of higher education.

(3) The cost principles in Subpart 1-15.2 of Title 41 of the Code of Federal Regulations apply to project sponsors which are not units of State or local government or institutions of higher education.

§ 89.43 Subproject agreements.

(a) Project sponsors may award project funds and enter into agreements (subgrants, contracts, or subcontracts) with other organizations to implement subprojects only if specifically authorized to do so by the basic project agreement. A subproject is any separately identifiable portion of total project activities which involves the enrollment and employment of eligible individuals and the general supervision and management of that portion of the total project activities.

(b) Project sponsors may enter into subproject agreements only with "eligible organizations" as defined in § 89.3.

(c) Subproject agreements may not provide for project activity, including the employment of eligible individuals, past the completion date of the basic project agreement.

(d) Project sponsors shall be held directly responsible for the performance and manner of performance of all activity which they implement under subproject agreements.

Subpart D—Administrative Requirements for Project Grants to State and Local Governments

§ 89.51 General.

This Subpart D states the Department's administrative requirements, standards, and procedures for grants awarded under the Act to State and local governments. These requirements, standards, and procedures reflect those authorized and required by Federal Management Circular (FMC) 74-7. This Subpart D explicates the material contained in FMC 74-7 as it applies to State and local governments which are awarded grants under the Act. Each State and local government which is awarded a grant under the Act must conform to these administrative requirements, standards, and procedures. Hereinafter, State and local governments which are awarded a grant under the Act are referred to as "grantees."

§ 89.52 Cash depositories.

(a) Any moneys advanced to a grantee are "public moneys" (owned by the Federal Government) and must be deposited in a bank with FDIC insurance coverage; and the balances exceeding FDIC coverage must be collaterally secure, as provided for in 12 U.S.C. 265.

(b) Except as provided by paragraph (a) of this section, there are no Department of Labor requirements for the physical segregation of cash depositories for grant funds which are provided to the grantee, nor are there any other requirements or eligibility standards for cash depositories in which Federal grant funds are deposited by the grantee.

(c) A separate bank account may be used when payments under letter of credit are made on a "checks-paid" basis in accordance with agreements entered into by a grantee, the Federal Government, and the banking institutions involved.

(d) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees are encouraged to use minority banks.

§ 89.53 Bonding and insurance.

Each grantee shall apply its normal bonding and insurance requirements, including fidelity bonds, to protect the interest of the Federal Government.

§ 89.54 Records maintenance.

(a) Each grantee shall retain for a period of at least three years all financial records, supporting documents, statistical records, and all other records pertinent to the project. The retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of the submission of the annual expenditure report, except that:

(1) The records shall be retained beyond the three-year period for as long as any audit findings remain unresolved;

(2) Records for nonexpendable property acquired with grant funds shall be retained for three years after its final disposition; and

(3) When grant records are transferred to or maintained by the Department, the three-year retention requirement does not apply to the grantee with respect to these records.

(b) Grantees may substitute microfilm copies in lieu of original records only with the written permission of the Grant Officer.

(c) When the Department determines that certain grant records have long-term or historical retention value, the grantee shall, upon the Department's request, deliver the records to the Department. The grantee may request an arrangement to retain the records when they are needed for joint use.

(d) The Secretary of Labor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the grantee and its subproject sponsors which are pertinent to the grant project for the purpose of making audit, examination, excerpts, and transcripts.

(e)(1) The names of project enrollees are considered public information. However, grantees shall maintain confidentiality of all other information regarding applicants for enrollment, project enrollees or their immediate families which may be obtained through application forms, interviews, tests, reports from public agencies or counselors, or any other source. Without the permission of the applicant or participant, such information shall be divulged only as necessary for purposes related to the performance or evaluation of the grant to persons having official responsibilities in connection with the grant and to governmental authorities to the extent necessary for the proper administration of law.

(2) No restrictions are placed on the grantee which will limit public access to grant records not covered by paragraph (e)(1) of this section except that such records shall remain confidential when confidentiality is necessary for any of the following reasons:

(i) To prevent a clearly unwarranted invasion of personal privacy;

(ii) To specifically comply with any Federal Executive Order or statute requiring the record to be kept secret;

(iii) To protect commercial or financial information obtained from a person or a firm on a privileged or confidential basis; or

(iv) To avoid the disclosure of any other information which can be exploited for personal gain.

(f) Grantees shall maintain records on each project participant, including:

(1) Personal identifying information and characteristics;

(2) Residence;

(3) Project job description;

(4) Project activities and supportive services in which the individual participated; and

(5) Status of the participant upon termination from the project.

(g) Grantees shall maintain a record of each determination of participant eligibility, including any grounds for an unfavorable determination. This requirement applies to persons who apply for enrollment and to persons who become enrolled and are subsequently determined to be ineligible for continuing enrollment.

§ 89.55 Single State agency not required.

No single State agency or multimember board or commission need be established or designated to administer or supervise the administration of grant projects under the Act.

§ 89.56 Project income.

(a) In accordance with Section 203 of the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577), the Federal Government will not hold any grantee which is a State or an agency or instrumentality of a State accountable for interest earned on grant funds pending their disbursement for project purposes.

(b) Grantees which are units of local government shall return to the Federal Government all interest earned on advances of grant funds (42 Comp. Gen. 289).

(c) Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with the "MA Property Handbook" which implements Attachment N of FMC 74-7.

(d) Royalties received from copyrights and patents during the grant period shall be retained by the grantee and be added to the funds already committed to the program. After termination or completion of the grant, the Federal share of royalties, which is any amount in excess of $200 received annually, shall be returned to the Department.

(e) All other gross income earned by grant-supported activities during the grant period shall be retained by the grantee and shall be added to funds committed to the project and be used to further project objectives.

§ 89.57 Matching share.

The criteria and procedures for evaluating and determining the allowability of cash and in-kind contributions made by grantees to satisfy the 10 percent matching requirement are those set forth in Attachment F of FMC 74-7.

§ 89.58 Standards for grantee financial management systems.

(a) Each grantee shall operate a financial management system which provides for:

(1) Accurate, current, and complete disclosure of the financial results of the grant project in accordance with the Federal reporting requirements;

(2) Records which identify the source and application of funds for grant-supported activities, including records containing information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income;

(3) Effective control over and accountability for all funds, property and other assets to safeguard these assets and to ensure that they are used only for authorized purposes;

(4) The comparison of actual costs with amounts budgeted for the grant;

(5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee when funds are advanced by the Federal Government;

(6) Drawdowns from the U.S. Treasury through the commercial bank as close as possible to the time of disbursements when advances are made by the letter-of-credit method;

(7) Procedures for determining the allowability and allocability of costs in accordance with the provisions of FMC 74-4; and

(8) Accounting Records which are supported by source documentation, including, in the case of enrollee wage and fringe benefit costs, time and attendance records.

(b) Each grantee shall audit or have audited the grant financial records to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with laws, regulations and administrative requirements. The grantee shall schedule these audits with reasonable frequency, usually annually, but not less frequently than once every two years. The grantee shall establish a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(c) Because the Department requires financial reporting on an accrual basis, the grantee shall, when its own accounting system is not kept on that basis, develop the required reporting information through analysis of documentation on hand or on the basis of best estimates.

(d) Each grantee shall require subgrantees or contractors (i.e., recipients of subgrants or contracts which are passed through by the grantee) to adopt all the standards set forth in this section, except the standard applicable to letter-of-credit drawdowns as described in paragraph (a)(6) of this section.

§ 89.59 Financial reporting requirements.

(a) Each grantee shall periodically submit a Financial Status Report which, on an accrual basis, indicates total costs incurred by cost category including indirect costs, if any. This report shall be prepared to coincide with the ending dates for Federal fiscal year quarters and shall be submitted to the Department no later than 30 days after the end of the quarterly reporting period. If the grant period ends at a date other than the last day of a Federal fiscal year quarter, a final report covering the entire grant period shall also be required. Grantees must certify to the accuracy and completeness of the costs reported.

(b) Each grantee shall periodically submit a Report of Federal Cash Transactions. Grantees which receive annual grants totalling $1 million or more shall submit this report monthly; and all other grantees shall submit it quarterly.

(c) Specific instructions and procedures for preparing and submitting the Financial Status Report and the Report of Federal Cash Transactions are contained in the "Forms Preparation Handbook." These written procedures and instructions implement Attachment H of FMC 74-7. The Department will furnish a copy of the Handbook to each grantee.

§ 89.60 Monitoring and reporting project performance.

(a) Each grantee shall continually monitor the performance of grant supported activities to assure that project goals are being achieved and that the requirements of the Act and the regulations in this part are being met.

(b) Each grantee shall periodically submit a Senior Community Service Employment Program Quarterly Progress Report (QPR). This report shall be prepared to coincide with the ending dates for Federal fiscal year quarters and shall be submitted to the Department no later than 30 days after the end of the quarterly reporting period. If the grant period ends at a date other than the last day of a Federal fiscal year quarter, a final report covering the entire grant period shall also be required. The Department will provide specific instructions to grantees for the preparation of this report. The QPR provides the following types of information:

(1) Enrollment level, enrollment turnover and placements into unsubsidized jobs;

(2) The allocation of subsidized job positions among specific community service areas;

(3) The aggregate characteristics profile of project enrollees;

(4) The average wage received by project enrollees; and

(5) A brief narrative account of significant project accomplishments and problem areas.

(c) Each grantee shall, without regard to normal reporting periods, advise the Grant Officer of the following types of conditions as soon as they become known:

(1) Problems, delays, or adverse conditions which may materially affect the ability to attain project goals with an indication of what corrective action has been or will be taken and an indication of the Federal assistance, if any, which may be helpful in resolving the situation; and

(2) Favorable developments or events which will materially assist the project in meeting or exceeding its intended purposes and goals.

(d) If a performance review conducted by the grantee discloses the need for grant budget revision, the grantee shall submit a request for revision to the Grant Officer.

(e) The Department will make onsite visits as frequently as is practicable to review project accomplishments and management control systems and to provide technical assistance. Grantees shall cooperate fully with the Department in the performance of these visits.

§ 89.61 Payment procedures.

(a) Consistent with the requirements, criteria and standards stated in Attachment J of FMC 74-7, grant payments will be made through a letter of credit, an advance by Treasury check, or a reimbursement by Treasury check.

(b) Specific instructions and procedures for preparing forms associated with grant payments are contained in the "Forms Preparation Handbook."

(c) The Department may withhold payments for proper charges if the grantee has failed to comply with project objectives, grant award conditions, or Federal reporting requirements or if the grantee is indebted to the United States and collection of the debt will not impair the accomplishment of the objectives of any grant program sponsored by the United States. When it determines to withhold payments, the Department will inform the grantee with reasonable notice that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the United States is liquidated.

§ 89.62 Budget revision procedures.

(a) The grant budget is the approved financial plan for both the Federal and nonfederal shares to carry out the purposes of the grant as set forth in the grant agreement document. Grantees shall promptly request prior written approvals from the Grant Officer for budget revision whenever:

(1) The revision results from a net increase or decrease from the anticipated enrollment level of 15 percent or more or from other significant changes in the scope of the grant project;

(2) The revision indicates a need for additional Federal funding;

(3) The Federal share of the grant budget is over $100,000 and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed $10,000, or 5 percent of the total grant budget, whichever is greater;

(4) The Federal share of the grant budget is $100,000 or less and the cumulative amount of transfers among direct cost object categories exceeds or is expected to exceed 5 percent of the total grant budget;

(5) The revision involves the transfer of amounts budgeted for indirect costs to absorb increases in direct costs;

(6) The revision pertains to the addition of cost items requiring approval in accordance with the provisions of FMC 74-4; or

(7) The grantee plans to transfer Federal funds allotted for enrollee wages and fringe benefits to other categories of expense.

(b) Before deviating from the grant budget in any manner described in paragraph (a) of this section, the grantee must obtain the prior written approval of the Grant Officer. All other deviations from the grant budget may be undertaken by the grantee without the approval of the Grant Officer. These deviations include the use of additional grantee funds to further the purposes of the project and the transfer of amounts budgeted for direct costs to absorb authorized increases in indirect costs. However, no grantee may deviate from the grant budget in a manner which violates the limitations on Federal funds stated in § 89.42.

(c) Each grantee shall promptly notify the Grant Officer when the amount of Federal funds authorized is expected to exceed actual needs by more than $5,000 or 5 percent of the Federal grant, whichever is greater.

(d) When requesting approval for budget revisions grantees must use the budget forms which are used in the grant agreement document. However, grantees may request by letter the cost item approvals required by FMC-74-4.

(e) Under normal circumstances, the Department will notify the grantee of budget revision approvals or disapprovals within 30 days of receipt of the request. If the revision request is still under consideration at the end of 30 days, the Department will inform the grantee in writing as to when the Department's decision will be forthcoming.

§ 89.63 Grant closeout procedures.

(a) Subsequent to the completion date of the grant, i.e., the date stated in the grant agreement document or any amendment thereto upon which Federal assistance under the grant ends, the grant must be closed out. Grant closeout is the process by which the Department determines that all required administrative actions and all required grant work have been completed by the grantee and the Department. The Department will notify each grantee of the procedures involved in the closeout of the grant. These procedures are described in paragraphs (a)(1) through (a)(8) of this section.

(1) If grant payments are made on a letter of credit, the Department will notify the grantee that the letter of credit is to be cancelled and that, following cancellation, any further payments under the grant will be made by Treasury check upon submission and approval of the required payment requests.

(2) Upon receipt and approval of the necessary requests, the Department will make prompt payment to the grantee for allowable reimbursable costs under the grant being closed out.

(3) Upon the Department's request, the grantee shall immediately refund any unencumbered balance of cash drawn down from the letter of credit or advanced by Treasury check. Items to be included with the refund check are detailed in the "Forms Preparation Handbook."

(4) Within 90 days after the completion date, the grantee shall submit the following financial and inventory reports which are described in the "Forms Preparation Handbook":

(i) A final Financial Status Report;

(ii) A final Report of Federal Cash Transactions;

(iii) The Grantee's Assignment of Refunds, Rebates, and Credits;

(iv) Bank Statement—Special Bank/Financial Account;

(v) Cancellation/Adjustment of Fidelity Bond;

(vi) A list of possible claimants for unclaimed checks cancelled or payment stopped;

(vii) Grant Closeout Tax Certification;

(viii) Government Property Inventory; and

(ix) Inventory Certificate.

(5) Within 90 days after the completion date, the grantee shall submit the Grantee's Release form as described in the "Forms Preparation Handbook."

(6) Within 30 days after the completion date, the grantee shall submit a final Senior Community Service Employment Program Quarterly Progress Report.

(7) After receipt of the documents and final reports described in paragraphs (a)(4) through (a)(6) of this section, the Department will make settlement for any upward or downward adjustment to the Federal share of costs.

(8) In the event a final audit has not been performed prior to closeout of the grant, the Department retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

(b) Suspension of a grant is an action by the Secretary which temporarily suspends Federal assistance under the grant pending corrective action by the grantee or pending a decision by the Secretary to terminate the grant. In the event that the Secretary determines that a grantee has failed to comply with stipulations, standards, or conditions of the grant agreement, the Secretary may, on reasonable notice to the grantee, suspend the grant, and withhold further payments, or prohibit the grantee from incurring additional obligations of grant funds, pending corrective action by the grantee or a decision to terminate in accordance with paragraph (c)(1) of this section. The Secretary may allow all necessary and proper costs which the grantee could not reasonably avoid during the period of suspension provided that they meet the provisions of FMC 74-4.

(c) The termination of a grant is the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to the completion date.

(1) The Secretary may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the grant. The Secretary will promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date. Payments made to grantees or recoveries by the Department under grants terminated for cause shall be in accord with the legal rights and liabilities of the parties.

(2) A grant may be terminated in whole or in part when both the grantee and the Secretary agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Secretary will allow full credit to the grantee for the Federal share of the noncancellable obligations, properly incurred by the grantee prior to termination.

§ 89.64 Property management standards.

Standards for the management, control, and disposition of grant-acquired property are contained in the "MA Property Handbook." Grantees must adhere to the standards set forth in the handbook. A copy of the handbook, which implements Attachment N of FMC 74-7, will be furnished by the Department to each grantee.

§ 89.65 Procurement standards.

The standards to be used by grantees for the procurement of supplies, equipment, and other services with Federal grant funds are those stated in Attachment O of FMC 74-7. The term "procurement" does not include the award of subproject agreements described in § 89.43. The standards in Attachment O of FMC 74-7 do not, therefore, apply to the process by which a grantee awards a subproject agreement.

Subpart E—Administrative Standards for Project Agreements With Public and Private Institutions of Higher Education, Public and Private Hospitals, and Other Public and Private Nonprofit Organizations

§ 89.71 General.

This Subpart E states the Department's administrative requirements, standards, and procedures for project agreements awarded under the Act to public and private institutions of higher education, public and private hospitals, and other public and private nonprofit organizations, including Indian Tribes. These requirements, standards, and procedures reflect those described by the General Services Administration in their notice of proposed rulemaking for 34 CFR 258 which was published Monday, February 10, 1975, in the FEDERAL REGISTER (40 FR 6304-6312). The requirements, standards, and procedures stated in this subpart will be amended as any subsequent effective regulations in 34 CFR Part 258 might indicate. Each public or private institution of higher education, public or private hospital, or other public or private nonprofit organization, including any Indian Tribe, which is awarded a project agreement under the Act must conform to these requirements, standards and procedures. Hereinafter, these types of organizations will be referred to as "recipients."

§ 89.72 Cash depositories.

(a) A separate bank account shall be used when letter-of-credit agreements entered into by the recipient, the Federal Government and the bank involved provide that drawdowns will be made when the recipient's checks are presented to the bank for payment.

(b) Any Federal project funds which are advanced to a recipient are subject to the control and regulation of the United States and its officers agents or employees (public moneys as defined in Treasury Circular No. 176). Funds advanced must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage; and the balance exceeding FDIC coverage must be collaterally secured. In order to ensure that security is obtained, a special bank account with a lien in favor of the Federal Government is required when funds are advanced to a recipient.

(c) Except as provided by paragraphs (a) and (b) of this section, there are no Department of Labor requirements for the physical segregation of cash depositories for project funds which are provided to the recipient, nor are there any other requirements or eligibility standards for cash depositories in which Federal project funds are deposited by the recipient.

(d) Consistent with the national goal of expanding opportunities for minority business enterprises, recipients are encouraged to use minority banks (a bank at least 50 percent owned by minority group members).

§ 89.73 Bonding and insurance.

(a) When advance payments are made to the recipient, the recipient shall obtain fidelity bond coverage which meets the specifications described in paragraphs (a)(1) through (a)(6) of this section.

(1) Fidelity bond coverage shall be in the form of a blanket position bond with an approved corporate surety covering any and all officers and employees of the recipient organization who are involved in the activities of the project.

(2) The amount of the bond shall be $25,000 or the amount of the advance payment, whichever is less.

(3) If possible, both the recipient and the Secretary of Labor shall be named as the insureds. If this is not possible, the recipient shall be named as the insured.

(4) The period of coverage shall be at least one year, with a discovery period of no less than one year after the cancellation or other termination of the bond.

(5) The bond shall stipulate that the Department of Labor Contract/Grant Officer be given 35 days advance notice by the surety prior to making any material change in, or cancellation of, the bond. The advance notice shall be provided by certified mails.

(6) If the bond covers advance payments under funding agreements with more than one agency, the bond shall include a recovery provision for each Federal agency involved.

(b) Recipients shall obtain and maintain in force during the lifetime of the project agreement "third person liability insurance" of the types and in the amounts described in this paragraph.

(1) The recipient shall obtain and maintain Worker's Compensation insurance for his staff in the amounts required by State law. Worker's Compensation insurance coverage for project enrollees shall meet the requirements stated in § 89.33.

(2) The recipient shall obtain and maintain Occupational Diseases Insurance as required by applicable law. In an area where all occupational diseases are not compensable under applicable law, insurance for occupational diseases shall be secured under the employer liability section of the recipient's insurance policy. Minimum coverage per incident is $100,000.

(3) The recipient shall obtain and maintain Employer Liability insurance to cover any liability imposed upon the recipient, by law, for damages on account of personal injuries, including death resulting therefrom, sustained by the recipient's employees by reason of accident. Minimum coverage per incident is $100,000.

(4) The recipient shall obtain and maintain General Liability Insurance (Bodily Injury) to provide coverage against claims arising from bodily injury or death to third parties occurring on the recipient's business premises or through the recipient's operations, except those arising from motor vehicles away from the premises, those covered by Worker's Compensation Law, and other exclusions stated in the policy. The minimum coverage for bodily injury is $100,000 per person and $300,000 per accident.

(5) The recipient shall obtain and maintain Automobile Liability insurance. The required coverage is $100,000 per person and $300,000 per accident for bodily injury and $25,000 per accident for property damage. The

types and amounts stated for vehicle insurance must apply to any vehicle operated or used in connection with project activities. In the event a privately-owned vehicle is used, the Federal Government's share of insurance premiums, including any additional coverage required to conform with the requirements of this paragraph, shall be prorated in accordance with the vehicle's actual use while conducting activities under the project.

§ 89.74 Records maintenance.

(a) Each recipient shall retain for a period of at least three years all financial records, supporting documents, statistical records, and all other records pertinent to the project. For types of project agreements other than contracts the retention period starts from the date of the submission of the final expenditure report or, for agreements which are renewed annually, from the date of the submission of the annual expenditure report. For contracts, the retention period starts from the date of final payment. For all types of project agreements, however:

(1) The records shall be retained beyond the three-year period for as long as any audit findings remain unresolved;

(2) Records for nonexpendable property acquired with Federal project funds shall be retained for three years after its final disposition; and

(3) When project records are transferred to or maintained by the Department, the three-year retention requirement does not apply to the recipient with respect to these records.

(b) Recipients may substitute microfilm copies in lieu of original records only with the written permission of the Contract/Grant Officer.

(c) When the Department determines that certain project records have long-term of historical retention value, the recipient shall, upon the Department's request, deliver the records to the Department. However, the recipient may request an arrangement to retain the records when they are continuously needed for joint use.

(d) The Secretary of Labor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the recipient and its agents which are pertinent to the project for the purpose of making audit, examination, excerpts and transcripts.

(e)(1) The names of project enrollees are considered public information. However, recipients shall maintain confidentiality of all other information regarding applicants for enrollment, project enrollees or their immediate families which may be obtained through application forms, interviews, tests, reports from public agencies or counselors, or any other source. Without the permission of the applicant or participant, such information shall be divulged only as necessary for purposes related to the performance or evaluation of the project to persons having official responsibilities in connection with the project and to governmental authorities to the extent necessary for the proper administration of law.

(2) No restrictions are placed on the recipient which will limit public access to project records not covered by paragraph (e)(1) of this section except that records must remain confidential when confidentiality is necessary for any of the following reasons:

(i) To prevent a clearly unwarranted invasion of personal privacy;

(ii) To specifically comply with a Federal Executive Order or statute requiring the record to be kept secret;

(iii) To protect commercial or financial information obtained from a person or a firm on a privileged or confidential basis; or

(iv) To avoid the disclosure of any other information which can be exploited for personal gain.

(f) Recipients shall maintain records on each project participant, including:

(1) Personal identifying information and characteristics;

(2) Residence;

(3) Project job description;

(4) Project activities and supportive services in which the individual participated; and

(5) Status of the participant upon termination from the project.

(g) Recipients shall maintain a record of each determination of participant eligibility, including any ground for an unfavorable determination. This requirement applies to persons who apply for enrollment and to persons who become enrolled and are subsequently determined to be ineligible for continuing enrollment.

§ 89.75 Project income.

(a) In accordance with Section 203 of the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577), the Federal Government will not hold any recipient which is an instrumentality of a State accountable for interest earned on project fund spending their disbursement for project purposes.

(b) Recipients which are not instrumentalities of a State shall remit to the Federal Government all interest earned on advances of Federal project funds.

(c) Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with the "Property Handbook for MA Contractors."

(d) Royalties received as a result of copyrights or patents will be retained by the recipient unless the terms of the project agreement provide otherwise.

(e) All other gross income earned by project activities during the project agreement period shall be retained by the recipient and shall be added to funds committed to the project and be used to further eligible project objectives.

§ 89.76 Matching share.

(a) Definitions of terms for the purposes of this section are provided in this paragraph.

(1) "Project costs" means all allowable costs incurred by a recipient (as set forth in the applicable Federal cost principles) and the value of in-kind contributions made by third parties in accomplishing the objectives of the project agreement during the project period.

(2) "Matching share" means that portion of the project costs not borne by the Federal Government.

(3) "Cash contributions" means the recipient's cash outlay, including the outlay of money contributed to the recipient by non-Federal parties.

(4) "In-kind contributions" means the value of noncash contributions provided by the recipient and non-Federal third parties. Property purchased with Federal funds may not be considered as any part of the recipient's in-kind contribution. In-kind contributions may be in the form of real property and nonexpendable personal property, and the value of goods and services directly benefitting the project.

(b) The matching share may consist of items described in this paragraph.

(1) The matching share may include charges incurred by the recipient as project costs. It is acknowledged that not all charges require cash outlays by the recipient during the project period, such as depreciation and use charges for buildings and equipment.

(2) The matching share may include project costs financed with cash contributed or donated to the recipient by public agencies and institutions, and private organizations and individuals.

(3) The matching share may include project costs represented by services and real and personal property, or use thereof, donated by public agencies and institutions, and private organizations and individuals.

(c) All contributions, both cash and in-kind, will be accepted as part of the recipient's matching share when the contributions meet all the following criteria:

(1) Are verifiable from the recipient's records;

(2) Are not included as contributions to any other Federally assisted program;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives;

(4) Are types of charges which would be allowable under the applicable cost principles;

(5) Are not paid by the Federal Government directly or indirectly under another agreement; and

(6) Conform to the other requirements and standards stated in this section.

(d) Values for recipient in-kind contributions will be established in accordance with the applicable cost principles.

(e) Specific procedures for recipients in establishing the value of in-kind contributions from non-Federal third parties are described in this paragraph.

(1) Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteer service may be counted toward the matching share if the service is an integral and necessary part of the approved project. Rates for volunteers must be consistent with those paid for similar work in the recipient's organization. In instances when the required skills are not found in the recipient's organization, rates must be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. When an employer other than the recipient furnishes the services of an employee, these services must be valued at the employee's regular rate of compensation, provided that these services are in the same skill for which the employee is normally paid.

(2) Donated expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Values assessed to expendable personal property included in the matching share must be reasonable and must not exceed the market value of the property at the time of the donation.

(3)(i) Depreciation or use charges may be made for the contributed use of equipment, buildings, or land which directly supports project activities. The full value of equipment or other capital assets and fair rental charges for land may be included only if permitted and approved by the Department in writing.

(ii) The value of donated property will be determined in accordance with the usual accounting policies of the recipient with the following qualifications:

(A) The value of donated land and buildings may not exceed its fair market value at the time of donation as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration (GSA) representative);

(B) The value of donated nonexpendable personal property may not exceed the fair market value of equipment and property of the same age and condition at the time of donation;

(C) The value of donated space may not exceed the fair rental value of comparable space as established by an independent appraiser of comparable space and facilities in a privately owned building in the same locality; and

(D) The value of loaned equipment may not exceed its fair rental value.

(f) Volunteer services contributed from non-Federal third parties must be documented, to the extent feasible, by the same methods used by the recipient for its employees. Also, the basis used for determining the value of personal services, material, equipment and land contributed from non-Federal third parties must be documented.

§ 89.77 Standards for recipient financial management systems.

(a) Each recipient shall operate a financial management system which provides for:

(1) Accurate, current, and complete disclosure of the financial results of the project in accordance with the Federal reporting requirements;

(2) Records which identify the source and application of funds for Federally supported project activities, including records containing information pertaining to Federal project awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income;

(3) Effective control over and accountability for all funds, property and other assets to safeguard these assets and to ensure that they are used only for authorized purposes;

(4) The comparison of actual costs with amounts budgeted for the project;

(5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the recipient when funds are advanced by the Federal Government;

(6) Drawdowns from the U.S. Treasury through the commercial bank as close as possible to the time of disbursements when advances are made by the letter-of-credit method;

(7) Procedures for determining the allowability and allocability of costs in accordance with the applicable Federal cost principles and the terms of the project agreement; and

(8) Accounting records which are supported by source documentation, including, in the case of enrollee wage and fringe benefit costs, time and attendance records.

(b) Each recipient shall conduct or arrange for examinations in the form of audits or internal audits of its financial transactions. These examinations may be performed only by individuals who are sufficiently independent of those who authorize the expenditure of Federal funds to produce unbiased opinions, conclusions or judgments. These examinations shall be made to ascertain the effectiveness of the financial management system and internal procedures that have been established to meet the terms and conditions of the project agreement. Examinations should be conducted on an organizationwide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the project agreement. The tests must include an appropriate resolution of audit findings agreement. Examinations must be conducted with reasonable frequency, but not less frequently than once every two appropriate sampling from the project years. The recipient shall establish a systematic method to assure timely and recommendations.

(c) Because the Department requires financial reporting on an accrual basis, the recipient shall, when its own accounting system is not kept on that basis, develop the required reporting information through analysis of documentation on hand or on the basis of best estimates.

(d) Recipients shall require subproject sponsors to adopt the standards stated in this section, except those for letter-of-credit drawdowns as described in paragraph (a)(6) of this section.

§ 89.78 Financial reporting requirements.

(a) Each recipient shall periodically submit a Financial Status Report which, on an accrual basis, indicates total costs incurred by cost category including indirect costs, if any. This report shall be prepared to coincide with the ending dates for Federal fiscal year quarters and shall be submitted to the Department no later than 30 days after the end of the quarterly reporting period. If the project period ends at a date other than the last day of a Federal fiscal year quarter, a final report covering the entire project period shall also be required. Recipients must certify to the accuracy and completeness of the cost reported.

(b) Each recipient shall periodically submit a Report of Federal Cash Transactions. Recipients which receive advances totalling $1 million or more per year shall submit this report monthly; and all other recipients shall submit it quarterly.

(c) Specific instructions and procedures for preparing and submitting the Financial Status Report and the Report of Federal Cash Transactions are contained in the "Forms Preparation Handbook." The Department will furnish a copy of the handbook to each recipient.

§ 89.79 Monitoring and reporting project performance.

(a) Each recipient shall continually monitor the performance of project activities to assure that project goals are being achieved and that the requirements of the Act and the regulations in this part are being met.

(b) Each recipient shall periodically submit a Senior Community Service Employment Program Quarterly Progress Report (QPR). This report shall be prepared to coincide with the ending dates for Federal fiscal year quarters and shall be submitted to the Department no later than 30 days after the end of the quarterly reporting period. If the project period ends at a date other than the last day of a Federal fiscal year quarter, a final report covering the entire project period shall also be required. The QPR shall be submitted for each subproject in cases where the recipient conducts a multi-city and multi-State project. The Department will provide specific instructions to recipients for the preparation of this report. The QPR provides the following types of information:

(1) Enrollment level, enrollment turnover and placements into unsubsidized jobs;

(2) The allocation of subsidized job positions among specific community service areas;

(3) The aggregate characteristics profile of project enrollees;

(4) The average wage received by project enrollees; and

(5) A brief narrative account of significant project accomplishments and problem areas.

(c) Each recipient shall, without regard to normal reporting periods, advise the Contract/Grant Officer of the following types of conditions as soon as they become known:

(1) Problems, delays, or adverse conditions which may materially affect the ability to attain project goals with an indication of what corrective action has been or will be taken and an indication of the Federal assistance, if any, which may be helpful in resolving the situation; and

(2) Favorable developments or events which will materially assist the project in meeting or exceeding its intended purposes and goals.

(d) If a performance review conducted by the recipient discloses the need for project budget revision, the recipient shall submit a request for revision to the Contract/Grant Officer.

(e) The Department will make onsite visits as frequently as is practicable to review project accomplishments and management control systems and to provide technical assistance. Recipients shall cooperate fully with the Department in these visits.

§ 89.80 Payment procedures.

(a) Consistent with all applicable Federal requirements, payments to recipients will be made through letter-of-credit, advance by Treasury check, or reimbursement by Treasury check. The Department will provide specific instructions and procedures to each recipient.

(b) The Department may withhold payments for proper charges if the recipient has failed to comply with project objectives, award conditions, or Federal reporting requirements or if the recipient is indebted to the United States and the collection of the debt will not impair the accomplishment of the objectives of any project or program sponsored by the United States. When it determines to withhold payments, the Department will inform the recipient with reasonable notice that payment will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the United States is liquidated.

§ 89.81 Budget revision procedures.

(a) The project budget is the approved financial plan for both the Federal and non-federal shares as set forth in the project agreement document. Recipients shall promptly request the prior written approval from the Contract/Grant Officer for budget revision whenever:

(1) The revision results from a net increase or decrease from the anticipated enrollment level of 15 percent or more, or from other significant changes in the scope of the grant project;

(2) The revision indicates a need for additional Federal funding;

(3) The Federal share of the budget is over $100,000 and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed 5 percent of the total budget;

(4) The revision involves the transfer of amounts budgeted for indirect costs to absorb increases in direct costs or vice versa;

(5) The revision pertains to expenditures which require approval in accordance with FMC 73-8 (34 CFR Part 254); or

(6) The recipient plans to transfer Federal funds allotted for enrollee wages and fringe benefits to other categories of expense.

(b) Before deviating from the project budget in any manner described in paragraph (a) of this section, the recipient must obtain the prior written approval of the Contract/Grant Officer. All other deviations from the project budget may be undertaken by the recipient without the approval of the Contract/Grant Officer. These deviations include the use of additional recipient funds to further the purposes of the project. However, no recipient may deviate from the project budget in a manner which violates the limitations on Federal funds stated in § 89.42.

(c) Each recipient shall promptly notify the Contract/Grant Officer when the amount of Federal funds authorized is expected to exceed actual needs by more than $5,000 or 5 percent of the Federal award, whichever is greater.

(d) When requesting approval for budget revisions, recipients must use the budget forms which are used in the project agreement document.

(e) Under normal circumstances, the Department will notify the recipient of budget revision approvals or disapprovals within 30 days of receipt of the request. If the revision request is still under consideration at the end of 30 days, the Department will inform the recipient in writing as to when the Department's decision will be forthcoming.

§ 89.82 Closeout procedures.

Subsequent to the completion date of the agreement, i.e., the date stated in the agreement document or any amendment thereto upon which Federal assistance under the agreement ends, the agreement must be closed out. Closeout is the process by which the Department determines that all required administrative actions and all required project work have been completed by the recipient and the Department. The Department will notify each recipient of the procedures involved in the closeout of the agreement. These procedures are described in this section.

(a) If payments are made on a letter of credit, the Department will notify the recipient that the letter of credit is to be cancelled and that, following cancellation, any further payments under the agreement will be made by Treasury check upon submission and approval of the required payment requests.

(b) Upon receipt and approval of the necessary requests, the Department will make prompt payment to the recipient for allowable reimbursable costs under the agreement being closed out.

(c) Upon the Department's request, the recipient shall immediately refund any unencumbered balance of cash drawn down from the letter of credit or advanced by Treasury check. Items to be included with the refund check are detailed in the "Forms Preparation Handbook."

(d) Within 90 days after the completion date, the recipient shall submit the following financial and inventory reports:

(1) A final Financial Status Report;

(2) A final Report of Federal Cash Transactions;

(3) The Assignment of Refunds, Rebates, and Credits;

(4) Bank Statement-Special Bank/Financial Account;

(5) Cancellation/Adjustment of Fidelity Bond;

(6) A list of possible claimants for unclaimed checks canceled or payment stopped;

(7) Closeout Tax Certification;

(8) Government Property Inventory; and

(9) Inventory Certificate.

(e) Within 90 days after the completion date, the recipient shall submit the required Release form.

(f) Within 30 days after the completion date, the recipient shall submit a final Senior Community Service Employment Program Quarterly Progress report.

(g) After receipt of the documents and final reports described in paragraphs (a) through (f) of this section, the Department will make settlement for any upward or downward adjustment to the Federal share of costs.

(h) In the event a final audit has not been performed prior to closeout of the agreement, the Department retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 89.83 Suspension and termination procedures.

(a) Suspension of an agreement is an action by the Secretary which temporarily suspends Federal assistance under the agreement pending corrective action by the recipient or pending a decision by the Secretary to terminate the agreement. In the event that the Secretary determines that a recipient has failed to comply with stipulations, standards, or conditions of the agreement, the Secretary may, on reasonable notice to the grantee, suspend the agreement, and withhold further payments, or prohibit the recipient from incurring additional obligations of Federal funds, pending corrective action by the recipient or a decision to terminate in accordance with paragraph (b)(1) of this section. The Secretary may allow all necessary and proper costs which the recipient could not reasonably avoid during the period of suspension provided that they meet the provisions of the applicable costs principles.

(b) The termination of an agreement is the cancellation of Federal assistance, in whole or in part, under an agreement at any time prior to the completion date.

(1) The Secretary may terminate any agreement in whole, or in part, at any time before the date of completion, whenever it is determined that the recipient has failed to comply with the conditions of the agreement. The Secretary will promptly notify the recipient in writing of the determination and the reasons for the termination, together with the effective date. Payments made to recipients or recoveries by the Department under agreements terminated for cause shall be in accord with the legal rights and liabilities of the parties.

(2) An agreement may be terminated in whole or in part when both the recipient and the Secretary agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Secretary will allow full credit to the recipient for the Federal share of the noncancellable obligations, properly incurred by the recipient prior to termination.

(3) If the agreement is in the form of a contract, the Contracting Officer may cancel the agreement (i.e., contract) in whole or in part whenever the Contracting Officer determines that termination would be in the best interest of the Government.

§ 89.84 Property management standards.

Standards for the management, control, and disposition of property acquired under the agreement are contained in the "Property Handbook for MA Contractors." Recipients shall adhere to the standards set forth in the handbook. A copy of the handbook will be furnished by the Department to each recipient.

§ 89.85 Procurement standards.

(a) Recipients shall procure supplies, equipment and other services with Federal project funds in an effective manner and in compliance with the provisions of applicable Federal law and executive orders. Recipients shall rely on the private sector to provide goods and services to the extent feasible. The term "procurement" refers to the acquisition of supplies, equipment and other services from outside sources which are to be used by the recipient in carrying out its organizational mission and responsibilities under the project. The term "procurement" does not refer to the award of subproject agreements. The standards described in this section do not, therefore, apply to the process by which the recipient awards a subproject agreement, except as otherwise noted specifically in this section.

(b) The recipient shall maintain a code or standard of conduct which shall govern the performance of its officers, employees and agents in the award and administration of procurement contracts and subproject agreements using Federal projects funds. The recipient's officers, employees and agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from actual or potential contractors or subproject sponsors. The recipient's code or standard of conduct shall provide for disciplinary actions against persons who violate the code or standard.

(c)(1) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors which may eliminate competition or otherwise restrain trade. Procurement awards shall be made to the bidder/offeror with the lowest bid provided the bidder/offeror is responsible and its bid/offer is responsive to the solicitation and is most advantageous to the recipient, price and other factors considered. Solicitations for procurements must describe clearly the requirements which the bidder/offeror must meet in order for the bid/offer to be evaluated by the recipient. Any and all bids/offers may be rejected when it is in the recipient's interest to do so.

(2) All awards of subproject agreements must be made on the most practical competitive basis. Recipients are encouraged to consider as many potential subproject sponsors in an area as is reasonable in order to select the one which assures the most effective use of Federal project funds.

(d) Recipients shall establish procurement procedures which, as a minimum, are based on the requirements described in this paragraph.

(1) Proposed procurement actions shall include procedure to assure the avoidance of purchasing unnecessary or duplicative items. When appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(2) Solicitations for supplies and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the name brand which must be met by bidders/offerors shall be clearly specified.

(3) Positive efforts must be made by recipients to utilize small businesses and minority-owned businesses as sources of supplies and services. These efforts should focus on allowing these types of sources the maximum feasible opportunity to compete for procurement awards under the project agreement.

(4) The type of procuring instruments used, e.g., fixed price contracts, cost reimbursement contracts, purchase orders, and incentive contracts, shall be determined by the recipient to be appropriate for the particular procurement and for promoting the best interests of the project. The "cost plus a percentage of cost" method of contracting may not be used.

(5) Procurement contracts may be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.

(6) No proposed sole source procurement contracts in which the aggregate expenditure is expected to exceed $5,000 may be awarded without prior written approval from the Contract/Grant Officer.

(7) Procurement records and files for purchases in excess of $10,000 shall include:

(i) Basis for contractor selection;

(ii) Justification for lack of competition when competitive bids or offers are not obtained and the written authority of the Contract/Grant Officer for the noncompetitive procurement as is required by paragraph (d)(7) of this section; and

(iii) Basis for award cost or price.

(8) A system for procurement contract administration shall be maintained to ensure contractor conformance with terms, conditions and speci-

fications of the contract and to ensure adequate and timely followup of all purchases.

(e) In addition to provisions which provide for a sound and complete agreement, the recipient shall include in procurement agreements the provisions described and required by paragraphs (e)(1) through (e)(5) of this section. These provisions shall also be applied to subcontracts.

(1) Contracts in excess of $10,000 shall contain provisions or conditions that will allow for administrative, contractual, or legal remedies in instances in which contractors violate or breach contract terms and provide for such remedial actions as may be appropriate.

(2) All contracts in excess of $10,000 must contain suitable provisions for termination by the recipient including the manner by which termination will be effected and the basis for settlement. In addition, these contract provisions must describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) Contracts or agreements, the principal purpose of which is to create, develop, or improve products processes, or methods; or for exploration into fields which directly concern public welfare, shall contain a notice to the effect that matters regarding rights to inventions and materials generated under the contract or agreement are subject to the Department's regulations and recipient's regulations. The contractor must be advised as to the source of additional information regarding these matters.

(4) All negotiated procurement contracts in excess of $2,500 shall include a provision to the effect that the recipient, the Department, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to the activities of the project.

(5) Procurement agreements and subproject agreements in excess of $100,000 shall contain a provision which requires the awardee to agree to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act of 1970. Violations must be reported to the Department and the Regional Office of the Environmental Protection Agency.

(f) The standards contained in this section in no way relieve the recipient of contractual responsibilities arising under its contracts or subproject agreements. The recipient is the responsible authority, without recourse to the Department, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements and subproject awards entered into in support of the project agreement. This includes disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the appropriate local, State, or Federal authority.

Subpart F—Interagency Agreements

§ 89.91 Administration.

(a) The Secretary will require other Federal establishments which receive and utilize funds under the Act to submit financial reports and project progress reports. However, the Secretary will not require these reports to be submitted more frequently than quarterly.

(b) The Secretary will require other Federal establishments which receive and utilize funds under the Act to maintain the standard records on individual participants and participant activities.

(c) In all aspects of project administration other than those described in paragraphs (a) and (b) of this section, Federal establishments which receive and utilize funds under the Act may use their normal administrative procedures.

Subpart G—Assessment and Evaluation

§ 89.96 General.

This Subpart G sets forth the procedures which will be observed by the

Department in assessing and evaluating the results and effectiveness of projects under the Act. The Department will assess project sponsors to determine whether they are carrying out the purposes and provisions of the Act in accordance with their project agreements. The Secretary will also evaluate the overall program conducted under the Act to aid in the overall administration of the Act.

§ 89.97 Responsibilities of the Secretary.

(a) As used in this section, the term "assessment" means the Federal review of the performance of individual project sponsors; and the term "evaluation" means the Federal study of the overall results and effectiveness of the Senior Community Service Employment Program.

(b) The Secretary has the responsibility to determine whether project sponsors are operating in accord with their respective project agreements in carrying out the purposes and provisions of the Act and are demonstrating maximum efforts to achieve the stated goals and objectives of their projects.

(c)(1) Assessment will be conducted through the review of required periodic reports and, as necessary, will be supplemented with special reports from project sponsors, selective on-site reviews, including the investigation of allegations or complaints, or other examination as may be deemed necessary and appropriate by the Secretary.

(2) Assessment may also be conducted for purposes of offering technical assistance and recommendations for corrective actions to project sponsors as considered necessary.

(d) The Secretary has the responsibility to provide for the continuing evaluation of all projects and activities conducted under the Act. These studies will include examination of:

(1) Cost in relation to effectiveness;

(2) Impact on communities and participants;

(3) Implications for related programs;

(4) Extent to which the needs of the target client group are being met;

(5) Adequacy of mechanisms for the administration of the Senior Community Service Employment Program;

(6) Opinions of participants about the strengths and weaknesses of projects; and

(7) The extent to which artificial barriers restricting employment and advancement opportunities in organizations receiving funds under the Act have been removed.

(e) The Secretary will compile, on a State, regional, and national basis, information obtained from periodic reports or special reports, surveys or samples required from project sponsors, including information related to:

(1) Enrollee characteristics;

(2) Levels of enrollment and turnover in enrollment;

(3) Allocation of enrollment positions among specific areas of community service employment; and

(4) Costs.

(f) Evaluations carried out in accordance with paragraph (d) of this section may be conducted directly by the Department or through contract, grant or other arrangement as the Secretary deems necessary and appropriate.

§ 89.98 Limitation.

The Secretary may not, in arranging for the evaluation of projects under the Act, utilize for such evaluation any nongovernmental individual institution or organization which is associated with any project as a consultant, technical advisor or in any similar capacity.

Subpart H—Consultation With Other Agencies

§ 89.99 Consultation.

(a) The Secretary will consult with and obtain the written views of the Commissioner of the Administration on Aging prior to the establishment or revision of general policy in the administration of the Act.

(b) The Secretary will, through the Commissioner of the Administration on Aging, consult with State and area agencies on aging with regard to:

(1) The localities in which projects are most needed;

(2) The employment situations and the type of skills possessed by eligible individuals at the local level; and

(3) Potential projects and the number and percentage of eligible individuals in the local populations.

(c) The Secretary will consult and cooperate with the Director of the Community Services Administration, the Secretary of Health, Education and Welfare, and the heads of other Federal agencies carrying out related programs in order to achieve optimal coordination with these other programs and to otherwise carry out the Department's responsibilities under the Act.

PART 90—CERTIFICATION OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

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AUTHORITY: Sec. 248, Pub. L. 93-618, 88 Stat. 2029 (19 U.S.C. 2320).

SOURCE: 42 FR 32772, June 28, 1977, unless otherwise noted.

Subpart A—General

§ 90.1 Purpose.

The purpose of this Part 90 is to set forth regulations relating to the responsibilities vested in the Secretary of Labor by the Trade Act of 1974 (Pub. L. 93-618) concerning petitions and determinations of eligibility to apply for worker adjustment assistance. Section 248 of the Act directs the Secretary of Labor to prescribe regulations which will implement the provisions relating to adjustment assistance for workers. This part will provide for the prompt and effective disposition of workers' petitions for certification of eligibility to apply for adjustment assistance. It reflects delegations of authority which will be published in the FEDERAL REGISTER (40 FR 17863, 40 FR 22048).

§ 90.2 Definitions.

As used in this part, the term:

"Act" means the Trade Act of 1974, Pub. L. 93-618, 88 Stat. 1978, 2011-2030 (19 U.S.C. 2271-2322).

"Appropriate subdivision" means an establishment in a multi-establishment firm which produces the domestic articles in question or a distinct part or section of an establishment (whether or not the firm has more than one establishment) where the articles are produced. The term "appropriate subdivision" includes auxiliary facilities operated in conjunction with (whether or not physically separate from) production facilities.

"Certifying officer" means an official in the Bureau of International Labor Affairs, U.S. Department of Labor, who has been delegated responsibility to make determinations and issue certifications of eligibility to apply for adjustment assistance, preside at public hearings under section 221(b) of the Act, issue subpenas, and perform such further duties as may be required by the Secretary or by this Part 90.

"Commission" means the United States International Trade Commission, formerly named the United States Tariff Commission.

"Date of the petition" means the date thereon, but which in no event shall be more than 30 days before the date of filing.

"Date of filing" means the date on which petitions and other documents are received in the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, Washington, D.C. 20210.

"Date of issuance" means the date on which a certification of eligibility to apply for adjustment assistance is signed by the certifying officer.

"Director" means the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, Washington, D.C. The Director is responsible for the conduct of worker investigations under this part and for recommending to the certifying officer whether or not to issue certifications of eligibility to apply for adjustment assistance.

"Firm" includes an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy, and receiver under decree of any court. A firm, together with any predecessor or successor-in-interest, or together with any affiliated firm controlled or substantially beneficially owned by substantially the same persons, may be considered a single firm.

"Group" means three or more workers in a firm or an appropriate subdivision thereof.

"Increased imports" means that imports have increased either absolutely or relatively, and would generally mean those increases as have occurred from a representative based period subsequent to the effectiveness of the most recent trade agreement concessions proclaimed by the President beginning in 1968.

"Layoff" means a suspension from pay status for lack of work initiated by the employer and expected to last for no less than seven (7) consecutive calendar days.

"Like or directly competitive" means that "like" articles are those which are substantially identical in inherent or intrinsic characteristics (i.e., materials from which the articles are made, appearance, quality, texture, etc.); and "directly competitive" articles are those which, although not substantially identical in their inherent or intrinsic characteristics, are substantially equivalent for commercial purposes (i.e., adapted to the same uses and essentially interchangeable therefor).

An imported article is "directly competitive with" a domestic article at an earlier or later stage of processing, and a domestic article is "directly competitive with" an imported article at an earlier or later stage of processing, if the importation of the article has an economic effect on producers of the domestic article comparable to the effect of importation of articles in the same stage of processing as the domestic article.

"Partial separation" means, with respect to an individual who has not been totally separated, that:

(a) The worker's hours of work have been reduced to 80 percent or less of the worker's average weekly hours at the firm or appropriate subdivision thereof, and

(b) The worker's wages have been reduced to 80 percent or less of the worker's average weekly wage at the firm or appropriate subdivision thereof.

"Secretary" means the Secretary of Labor, U.S. Department of Labor.

"Significant number or proportion of the workers" means that:

(a) In most cases the total or partial separations, or both, in a firm or appropriate subdivision thereof, are the equivalent to a total unemployment of five percent (5 percent) of the workers or 50 workers, whichever is less; or

(b) At least three workers in a firm (or appropriate subdivision thereof) with a work force of fewer than 50 workers would ordinarily have to be affected.

"Threatened to begin" means, in the context of impending total or partial separations, the date on which it could reasonably be predicted that separations were imminent.

"Total separation" means the layoff or severance of an individual from a firm or an appropriate subdivision thereof.

§ 90.3 Applicability of part.

This Part 90 generally relates to certifications of eligibility made under the Act. Subpart B specifically applies to the initiation and conduct of worker investigations and the issuance of determinations and certifications of eligibility to apply for adjustment assistance. Subpart C applies to studies of workers in industries which are the subject of investigations for industry import relief. Subpart D contains general provisions with respect to filing of documents and public availability of documents.

Subpart B—Petitions and Determinations of Eligibility To Apply for Adjustment Assistance

§ 90.11 Petitions.

(a) *Who may file petitions.* A petition under section 221(a) of the Act and this Subpart B shall be filed by a group of workers for a certification of eligibility to apply for adjustment assistance or by their certified or recognized union or other duly authorized representative.

(b) *Identification of petitioners.* Every petition filed with the Department shall clearly state the group of workers on whose behalf the petition is filed and the name(s) and address(es) of the person(s) by whom the petition is filed. Every petition shall be signed by at least three individuals of the petitioning group or by an official of a certified or recognized union or other duly authorized representative. Signing of a petition shall constitute acknowledgement that each signer has read the entire petition, that to the best of the signer's knowledge and belief the statements therein are true, and that each signer is duly authorized to sign such a petition.

(c) *Contents.* Petitions may be filed on a U.S. Department of Labor form. Copies of this form may be obtained at State Employment Security Agency local offices or by writing the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, Washington, D.C. 20210. Every petition shall include: (1) The name(s), address(es), and telephone number(s) of the petitioner(s); (2) The name or a description of the group of workers on whose behalf the petition is filed (e.g., all hourly and salaried employees of the XYZ plant of ABC corporation); (3) The name and address of the workers' firm or appropriate subdivision thereof; (4) the name, address, telephone number, and title of an official of the firm; (5) The approximate date(s) on which the total or partial separation of a significant number or proportion of the workers in the workers' firm or subdivision began and continued, or threatened to begin, and the approximate number of workers affected by such actual or threatened total or partial separations; (6) A statement of reasons for believing that increases of like or directly competitive imports contributed importantly to total or partial separations and to the decline in the sales or production (or both) of the firm or subdivision (e.g., company statements, articles in trade association publications, etc.); and (7) A description of the articles produced by the workers' firm or appropriate subdivision, the production or sales of which are adversely affected by increased imports, and a description of the imported articles concerned. If available, the petition also should include information concerning the method of manufacture, end uses, and wholesale or retail value of the domestic articles produced and the United States tariff provision under which the imported articles are classified.

(d) *Number of copies.* One (1) signed original and two (2) clear copies of the petition shall be filed. The name(s) of the person(s) signing the petition shall be typewritten or otherwise clearly reproduced.

§ 90.12 Investigation.

Upon receipt of a petition, properly filed, the Director of the Office of Trade Adjustment Assistance shall promptly publish notice in the FEDERAL REGISTER that the petition has been received. The Director shall initiate, or order to be initiated, such investigation as he determines to be necessary and appropriate. The investigation may include one or more field visits to verify information furnished by the petitioner(s) and to elicit other relevant information. In the course of the field investigation representatives of the Department shall be authorized to meet with and obtain information from responsible company officials, union officials, employees and other interested parties, or organizations, both private and public as may be necessary to marshal all relevant facts to recommend an appropriate finding with respect to the issuance of a determination of eligibility to apply for adjustment assistance. Upon conclusion of the investigation a report thereof, including a recommendation regarding group eligibility shall be made, as more specifically defined in § 90.16 of this Part 90.

§ 90.13 Public hearings.

(a) *When held.* A public hearing shall be held in connection with an investigation instituted under § 90.12 whenever, not later than ten (10) days after the date of publication in the FEDERAL REGISTER of the notice of receipt of the petition, such a hearing is requested in writing by:

(1) The petitioner; or

(2) Any other person found by the Secretary or certifying officer to have a substantial interest in the proceedings. Such petitioner and other interested persons shall be afforded an opportunity to be present, to produce evidence, and to be heard.

(b) *Form of request.* A request for public hearing shall be filed in the same manner as provided for filing of petitions and other documents under § 90.31(a). A request by a person other than the petitioner shall contain:

(1) The name, address, and telephone number of the person, organization, or group requesting the hearing; and

(2) A complete statement of the relationship of the person, organization, or group requesting the hearing to the petitioner or the subject matter of the petition and a statement of the nature of its interest in the proceeding.

(c) *Time and place.* Public hearings will be held at the time and place specified in a notice published in the FEDERAL REGISTER. Such notice shall be published at least seven (7) calendar days before the scheduled hearing.

(d) *Presiding officers.* A certifying officer shall conduct and preside over public hearings.

(e) *Order of testimony.* Witnesses will testify in the order designated by the presiding officer. Each witness, after being duly sworn, will proceed with testimony. After testifying, a witness may be questioned by the presiding officer or an agent designated by the presiding officer. Any person who has entered an appearance in accordance with paragraph (j) of this section may direct questions to the witness, but only for the purpose of assisting the presiding officer in obtaining relevant and material facts with respect to the subject matter of the hearing.

(f) *Evidence.* Witnesses may produce evidence of a relevant and material nature to the subject matter of the hearing.

(g) *Briefs.* Briefs of the evidence produced at the hearing and arguments thereon may be presented to the presiding officer by parties who have entered an appearance. Three (3) copies of such briefs shall be filed with the presiding officer within ten (10) days of the completion of the hearing.

(h) *Oral argument.* The presiding officer shall provide opportunity for oral argument after conclusion of the testimony in a hearing. The presiding officer will determine in each instance the time to be allowed for argument and the allocation thereof.

(i) *Authentication of evidence.* Evidence, oral or written, submitted at hearings, will upon order of the presiding officer be subject to verification from books, papers, and records of the parties submitting such evidence and from any other available sources.

(j) *Transcripts.* All hearings will be stenographically reported. Persons interested in transcripts of the hearings may inspect them at the U.S. Department of Labor in Washington, D.C., or purchase copies as provided in 29 CFR 70.62(c).

(k) *Appearances.* The petitioner or any other person showing a substantial interest in the proceedings may enter an appearance at a hearing, either in person or by a duly authorized representative.

§ 90.14 Subpena power.

(a) The Secretary or certifying officer may require by subpena the attendance and testimony of witnesses and the production of evidence necessary to make a determination.

(b) If a person refuses to obey a subpena issued under paragraph (a) of this section, the Secretary or a certifying officer may petition the United States District Court within the jurisdiction of which the proceeding is being conducted requesting an order requiring compliance with such subpena.

(c) Witnesses subpenaed under this section shall be paid the same fees and mileage as are paid for like services in the District Court of the United States. The witness fees and mileage shall be paid by the United States Department of Labor.

(d) Subpenas issued under paragraph (a) of this section shall be signed by a certifying officer and shall be served either in person by an authorized representative of the Department of Labor or by certified mail, return receipt requested. The date for compliance shall be not earlier than seven (7) calendar days following service of the subpena.

§ 90.15 Recommendation.

As promptly as possible, but in any event not later than 45 days after the filing of a worker petition, the Director of the Office of Trade Adjustment Assistance shall submit to the certifying officer recommendations concerning whether or not to issue a certification of eligibility to apply for adjustment assistance. These recommendations shall be forwarded together with an investigative report, proposed findings of fact, transcripts of any public hearing conducted under this subpart, and other material developed during the investigation.

§ 90.16 Determinations and certifications of eligibility to apply for adjustment assistance.

(a) *General.* Not later than 15 days after receipt of the recommendations forwarded pursuant to § 90.15, the certifying officer shall make a determination on the petition and where affirmative issue a certification of eligibility as provided below.

(b) *Requirements for determinations.* After reviewing the material submitted under § 90.15, including any supplemental material which may be required in reaching a determination the certifying officer shall make findings of fact concerning whether:

(1) A significant number or proportion of the workers in such workers' firm (or an appropriate subdivision of the firm) have become, or are threatened to become, totally or partially separated;

(2) Sales or production, or both, of such firm or subdivision have decreased absolutely; and

(3) Increases (absolute or relative) of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production. For purposes of this paragraph and part, the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

(c) *Notice of affirmative determination and certification of eligibility.* Upon reaching a determination on a petition that a group of workers has met all the requirements set forth in section 222 of the Act and paragraph (b) of this section, the certifying officer shall issue a certification of eligibility to apply for adjustment assistance and shall promptly publish in the FEDERAL REGISTER a summary of the determination together with the reasons for making such determination (with the exception of information which the certifying officer determines to be confidential). Such summary shall include the certification of eligibility and shall constitute a Notice of Determination and Certification of Eligibility.

(d) *Contents of certification of eligibility.* The certification shall specify in detail:

(1) The firm or subdivision thereof at which the workers covered by the certification have been employed (which need not be limited to the unit specified in the petition), and may

identify individual workers by name; and

(2) The impact date(s) on which the total or partial separations of the workers covered by the certification began or threatened to begin. When applicable, the certification shall specify the date(s) after which the total or partial separations of the petitioning group of workers from the firm or subdivision thereof specified in the certification are no longer attributable to the conditions set forth in paragraph (b) of this section. For purposes of this section, the "impact date" is the earliest date on which any part of the total or partial separations involving a significant number or proportion of workers began or threatened to begin.

(e) *Exclusions from coverage of a certification of eligibility.* A certification of eligibility to apply for adjustment assistance shall not apply to any worker:

(1) Whose last total or partial separation from the firm or appropriate subdivision occurred more than one (1) year before the date of the petition; or

(2) Whose last total or partial separation from the firm or appropriate subdivision occurred before October 3, 1974.

(f) *Notice of negative determination.* Upon reaching a determination that a group of workers has not met all the requirements set forth in section 222 of the Act and paragraph (b) of this section, the certifying officer shall promptly publish in the FEDERAL REGISTER a summary of the determination together with the reasons for making such determinations (with the exception of information which the certifying officer determines to be confidential). Such summary shall constitute a Notice of Negative Determination.

(g) *Notice of Determinations.* A notice of certification may contain a notice of negative determination with respect to certain seqments of workers. Such notice shall constitute a Notice of Determinations.

§ 90.17 Termination of certifications of eligibility.

(a) *Investigation.* Whenever the Director of the Office of Trade Adjustment Assistance has reason to believe, with respect to any certification of eligibility, that the total or partial separations from a firm or appropriate subdivision thereof are no longer attributable to the conditions specified in section 222 of the Act and § 90.16(b), the Director shall promptly make an investigation. Notice of the initiation of the investigation shall be published in the FEDERAL REGISTER and shall be transmitted to the group of workers concerned.

(b) *Opportunity for comment and hearing.* Within 10 days after publication of the notice under paragraph (a) of this section, the group of workers or other persons showing a substantial interest in the proceedings may request a public hearing or may make written submissions to show why the certification should not be terminated. If a hearing is requested under this paragraph, such hearing shall be conducted in accordance with § 90.13.

(c) *Recommendation.* Upon the conclusion of any public hearing conducted under this section, and after consideration of any written comments received under paragraph (b) of this section, the Director shall recommend to the certifying officer whether or not the certification should be terminated.

(d) *Notice of termination.* Within ten (10) days of receipt of a report recommending termination of a certification of eligibility, the certifying officer shall determine whether or not such certification shall be terminated. Upon reaching a determination that the certification of eligibility shall be terminated, the certifying officer shall make findings of fact and shall promptly have published in the FEDERAL REGISTER a summary of the determination and the reasons therefor (with the exception of information which the certifying officer determines to be confidential). Such summary shall constitute a Notice of Termination. Such termination shall apply only with respect to total or partial separations occurring after the termination date specified by the certifying officer. The termination date specified by the certifying officer shall be not sooner than the date on which notice of such termination is published in the FEDERAL REGISTER.

(e) *Notice of Partial Termination.* A notice of termination may cover only a portion of the group of workers specified in the certification. Such notice shall constitute a Notice of Partial Termination.

(f) *Notice of Continuation of Certification.* Upon reaching a determination that the certification of eligibility should be continued, the certifying officer shall promptly publish in the FEDERAL REGISTER a summary of the determination with the reasons therefor. Such summary shall constitute a Notice of Continuation of Certification.

§ 90.18 Reconsideration of determinations.

(a) *Determinations subject to reconsideration; time for filing.* Any worker, group of workers, certified or recognized union, or authorized representatives of such worker or group, aggrieved by a determination issued pursuant to the Act and §§ 90.16(c), 90.16(f), 90.16(g), or 90.17(d) may file an application for reconsideration of the determination with the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, Washington, D.C. 20210. All applications must be in writing and must be filed no later than thirty (30) days after the notice of the determination has been published in the FEDERAL REGISTER.

(b) *Contents of application for reconsideration.* An application for reconsideration shall include: (1) Name(s), address(es), and telephone number of the applicant(s); (2) The name or a description of the group of workers on whose behalf the application for reconsideration is filed; (3) The name and case number of the determination complained of; and (4) A statement of reasons for believing that the determination complained of is erroneous. If the application is based, in whole or in part, on facts not previously considered in the determination, such facts shall be specifically set forth. If the application is based, in whole or in part, on an allegation that the determination complained of was based on mistake of facts which were previously considered, such mistake of facts shall be specifically set forth. If the application is based, in whole or in part, on an allegation as to a misinterpretation of facts or of the law, such misinterpretation shall be specifically set forth.

(c) *Determination regarding application for reconsideration.* Not later than fifteen (15) days after receipt of the application for reconsideration, the certifying officer shall make and issue a determination granting or denying reconsideration. The certifying officer may grant an application for reconsideration under the following circumstances: (1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous; (2) If it appears that the determination complained of was based on mistake in the determination of facts previously considered; or (3) If, in the opinion of the certifying officer, a misinterpretation of facts or of the law justifies reconsideration of the determination.

(d) *Notice of affirmative determination regarding application for reconsideration.* Upon reaching a determination that an application for reconsideration meets the requirements of paragraph (c) of this section, the certifying officer shall issue an affirmative determination regarding the application and shall promptly publish notice in the FEDERAL REGISTER that the application for reconsideration has been received and granted. Such notice shall constitute a Notice of Affirmative Determination Regarding Application for Reconsideration.

(e) *Notice of negative determination regarding application for reconsideration.* Upon reaching a determination that an application for reconsideration does not meet the requirements of paragraph (c) of this section, the certifying officer shall issue a negative determination regarding the application and shall promptly publish in the FEDERAL REGISTER a summary of the determination, including the reasons therefor. Such summary shall constitute a Notice of Negative Determination Regarding Application for Reconsideration. A negative determination issued pursuant to this paragraph shall constitute a final determination for purposes of judicial review pursuant to section 250 of the Act and § 90.19(a).

(f) *Opportunity for comment.* Within ten (10) days after publication of a notice under paragraph (d) of this section, the group of workers or other persons showing an interest in the proceedings may make written submissions to show why the determination under reconsideration should or should not be modified.

(g) *Determinations on reconsideration.* Not later than forty-five (45) days after reaching an Affirmative Determination Regarding Application for Reconsideration, the certifying officer shall make a determination on the reconsideration.

(h) *Notice of revised certification of eligibility and notice of revised determination.* Upon reaching a determination on reconsideration that a group of workers has met all the requirements set forth in Section 222 of the Act and paragraph (b) of § 90.16, the certifying officer shall issue a revised determination concerning certification of eligibility to apply for adjustment assistance and shall promptly publish in the FEDERAL REGISTER a summary of the revised determination together with the reasons for making such revised determination (with the exception of information which the certifying officer determines to be confidential). Such summary shall include a certification of eligibility in accordance with paragraph (d) of § 90.16. The summary shall constitute a Notice of Revised Certification of Eligibility when the determination under reconsideration was a certification of eligibility. The summary shall constitute a Notice of Revised Determination when the determination under reconsideration was a negative determination or a certification containing a negative determination. A determination issued pursuant to this paragraph shall constitute a final determination for purposes of judicial review pursuant to section 250 of the Act and § 90.19(a).

(i) *Notice of negative determination on reconsideration.* Upon reaching a determination on reconsideration that a group of workers has not met all the requirements set forth in section 222 of the Act and paragraph (b) of § 90.16, the certifying officer shall issue a negative determination on reconsideration and shall promptly publish in the FEDERAL REGISTER a summary of the determination together with the reasons for making such determination (with the exception of information which the certifying officer determines to be confidential). Such summary shall constitute a Notice of Negative Determination on Reconsideration. A determination issued pursuant to this paragraph shall constitute a final determination for purposes of judicial review pursuant to section 250 of the Act and § 90.19(a).

§ 90.19 Judicial review of determinations.

(a) *General.* Pursuant to section 250 of the Act, any worker, group of workers, certified or recognized union, or authorized representative of such worker or group, aggrieved by a final determination issued pursuant to the Act and §§ 90.16(c), 90.16(f), 90.16(g), 90.17(d), 90.18(e), 90.18(h) or § 90.18(i) may file a petition for review of such determination with the United States court of appeals for the circuit in which such worker or group is located or in the United States Court of Appeals for the District of Columbia Circuit. The party seeking judicial review must file for review in the appropriate court within sixty (60) days after the notice of determination has been published in the FEDERAL REGISTER.

(b) *Certified record of the Secretary.* Upon receiving a copy of the petition for review from the clerk of the appropriate court of appeals, the certifying officer shall promptly certify and file in such court the record on which the determination was based. The record shall include transcripts of any public hearings, recommendations received pursuant to § 90.15, the findings of fact made pursuant to §§ 90.16(b), 90.18(e), 90.18(h) or § 90.18(i), and other documents on which the determination was based.

(c) *Further proceedings.* If a case is remanded to the Secretary by the court of appeals for the taking of further evidence, the certifying officer shall direct that further proceedings be conducted in accordance with the provisions of Subpart B of this part, including the taking of further evidence. The certifying officer, after the conduct of such further proceedings, may make new or modified findings of fact and may modify or affirm the previous determination. Upon the completion of such further proceedings, the certifying officer shall certify and file in the appropriate court of appeals the record of such further proceedings.

(d) *Substantial evidence.* The findings of fact by the certifying officer shall be conclusive if the appropriate court of appeals determines that such findings of fact are supported by substantial evidence.

Subpart C—Initiation and Conduct of Study With Respect to Workers in Industry Which is the Subject of an Investigation for Industry Import Relief

§ 90.21 Study.

(a) *Initiation.* Upon notification by the Commission, pursuant to section 224 of the Act, that the Commission has begun an investigation under section 201 with respect to an industry import relief action, the Secretary shall direct the Director of the Office of Trade Adjustment Assistance to immediately begin a study of (1) the number of workers in the domestic industry producing the like or directly competitive article(s) who have been or are likely to be certified eligible for adjustment assistance; and (2) the extent to which the adjustment of such workers to the import competition may be facilitated through the use of existing programs.

(b) *Report.* The report of the Secretary of the study under section 224(a) of the Act and paragraph (a) of this section shall be made to the President not later than fifteen (15) days after the day on which the Commission makes its report under section 201.

(c) *Release of report.* Upon making the report of the study to the President, the Secretary shall also promptly make the report public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the FEDERAL REGISTER.

§ 90.22 Dissemination of program knowledge and assistance to workers.

Whenever the Commission makes an affirmative finding under section 201(b) of the Act that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, the Secretary shall, to the extent feasible, make available to the workers in such industry full information about programs which may facilitate their adjustment to the import competition. He shall provide assistance to such workers in the preparation and processing of petitions and applications for program benefits.

Subpart D—General Provisions

§ 90.31 Filing of documents.

(a) *Where to file, date of filing.* Petitions and all other documents shall be filed at the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, Washington, D.C. 20210. If properly filed, such documents shall be deemed filed on the date on which they are actually received in the Office of Trade Adjustment Assistance.

(b) *Conformity with rules.* Documents filed in support of the initiation of an investigation by the Director of the Office of Trade Adjustment Assistance shall be considered properly filed if they conform with the pertinent rules prescribed in this Part 90. The Director may accept documents in substantial compliance with the pertinent rules of this part provided good and sufficient reason is stated in the document for inability to comply fully with the pertinent rules. The Director cannot waive full compliance with a rule which is required by the Act.

§ 90.32 Availability of information.

(a) *Information available to the public.* Upon request to the Director of the Office of Trade Adjustment Assistance, members of the public may inspect petitions and other documents filed with the Director under the provisions of this Part 90, transcripts of testimony taken and exhibits submitted at public hearings held under the provisions of this Part 90, recommendations to the certifying officer concerning determinations on petitions for certification of eligibility and determinations on termination of the effect of certifications of eligibility summaries of the certifying officer's determinations concerning certifications of eligibility and terminations of the effect of certifications of eligibility, public notices concerning worker assistance under the Act and other reports and documents issued for general distribution.

(b) *Information not available to the public.* Confidential business information, defined in § 90.33 of this part, shall not be available to the public.

§ 90.33 Confidential business information.

(a) *Definition.* Confidential business information means trade secrets and commercial or financial information which are obtained from a person and are privileged or confidential, as set forth in 5 U.S.C. 552(b) and 29 CFR Part 70.

(b) *Identification of information submitted in confidence.* Business information which is to be treated as confidential shall be submitted on separate sheets each clearly marked at the top, "Business Confidential." When submitted at hearings, such business information shall be offered as a confidential exhibit with a brief description of the nature of the information.

(c) *Acceptance of information in confidence.* The Director of the Office of Trade Adjustment Assistance may refuse to accept in confidence any information which he determines is not entitled to confidential treatment under this section. In the event of such refusal, the person submitting such information shall be notified and shall be permitted to withdraw such information.

§ 90.34 Notice procedures.

Formal notice of a certification, negative determination, or termination shall be transmitted promptly to the group of workers concerned and to all State Employment Security Agencies concerned whenever such notices are published in the FEDERAL REGISTER.

§ 90.35 Transitional provisions.

As more particularly provided in section 246 of the Act, a group of workers, their certified or recognized union, or other duly authorized representative who filed a petition under section 301(a)(2) of the Trade Expansion Act of 1962 before December 3, 1974, may file a new petition under section 221 of this Act if:

(a) The Commission has not rejected such previous petition before April 3, 1975; and

(b) No certification has been issued to the petitioning group under section 302(c) of the Trade Expansion Act of 1962 before April 3, 1975; and

(c) The new petition under section 221 of the Act is filed not later than July 2, 1975.

§ 90.36 Computation of time.

(a) The time periods specified in §§ 90.13(a), 90.18(a), and 90.19(a) will be computed by counting the day after publication in the FEDERAL REGISTER as one, and by counting each succeeding day, including Saturdays, Sundays, and holidays. However, when the final day would fall on a Saturday, Sunday or holiday, the time period will terminate at the end of the next succeeding Federal business day.

(b) The 60-day time period specified in Section 223(a) of the Act will be computed in the same manner as set forth in paragraph (a) of this section, except that the day after the date of filing of the petition shall be counted as the first day.

PART 91—ADJUSTMENT ASSISTANCE FOR WORKERS AFTER CERTIFICATION

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Subpart A—General

§ 91.1 Scope.

The regulations in this Part 91 pertain to applications by individuals to State agencies for adjustment assistance, such as trade readjustment allowances, training and training allowances, relocation allowances, job search allowances, and administrative requirements applicable to States agencies. Regulations as to certifications of groups of workers as eligible to apply for adjustment assistance appear in Part 90 of this title.

§ 91.2 Purpose.

The purpose of this Part 91 is to provide for prompt payment of trade readjustment allowances and other adjustment assistance to individuals covered by certifications, to provide for prompt and effective assistance to such individuals in securing suitable employment, and to implement the provisions of the Act uniformly and effectively throughout the United States. The regulations in this Part 91 shall be interpreted and applied to achieve such purpose.

§ 91.3 Definitions.

(a) As used in this Part 91—

(1) "Act" means Chapter 2 of Title II of the Trade Act of 1974, Pub. L. 93-618, 88 Stat. 1978, 2019-2030 (19 U.S.C. 2271-2322).

(2) "Adjustment assistance" means trade readjustment allowances, training and training allowances, job search allowances, relocation allowances, employment services, and any other right or benefit provided for adversely affected workers by the Act.

(3) "Adversely affected employment" means employment in a firm or appropriate subdivision of a firm if workers of such firm or subdivision are certified under § 90.16 of this title as eligible to apply for adjustment assistance.

(4) "Adversely affected worker" means an individual who, because of lack of work in adversely affected employment:

(i) Has been totally or partially separated from such employment, or

(ii) Has been totally separated from employment with the firm in a subdivision of which such adversely affected employment exists.

(5) "Appropriate week" means:

(i) As to a totally separated worker the week in which the individual's most recent total separation occurred; and

(ii) As to a partially separated worker the week for which the individual first receives a trade readjustment allowance following the individual's most recent partial separation.

(6) "Average weekly hours" means a figure obtained by dividing (i) total hours worked (excluding overtime) by an individual in adversely affected employment in the 52 calendar weeks (excluding weeks in such period during which the individual was sick or on vacation) preceding the week in which the individual claims to be partially separated by (ii) the number of weeks in such 52 calendar weeks (excluding weeks in such period during which the individual was sick or on vacation) in which the individual actually worked in adversely affected employment.

(7) "Average weekly manufacturing wage" means the national gross average weekly earnings of production workers in manufacturing industries for the latest calendar year as officially published by the Bureau of Labor Statistics, United States Department of Labor, most recently prior to a week for which adjustment assistance is payable to an individual.

(8) "Average weekly wage" means one-thirteenth of an individual's high quarter wages. The high quarter is the quarter in which the individual's total wages were highest among the first four of the last five completed calendar quarters preceding the individual's appropriate week.

(9) "Average weekly wage in adversely affected employment" means a figure obtained by dividing (i) total wages earned in adversely affected employment in the 52 calendar weeks (excluding weeks in such period during which the individual was sick or on vacation) preceding the week in which the individual claims to be partially separated by (ii) the number of weeks in such 52 calendar weeks (excluding weeks in such period during which the individual was sick or on vacation) in which the individual actually worked in adversely affected employment.

(10) "Benefit period" means a 2 year period commencing with and following an individual's appropriate week, except that for purposes of paying additional trade readjustment allowances under § 91.12(b) the benefit period shall be extended one year.

(11) "Certification" means a certification of eligibility to apply for adjustment assistance issued under § 90.16 of this title with respect to a group of workers.

(12) "Commuting area" means an area in commuting distance of an individual's place of residence.

(13) "Date of separation" means, as to a totally separated individual, the date on which the individual was laid off or otherwise totally separated from employment.

(14) "Employer" means any individual or type of organization, including the Federal government, a State government, or a political subdivision or instrumentality of either, which had one or more individuals performing service for it within the United States.

(15) "Employment" means any service performed for an employer by an individual for wages or by an officer of a corporation.

(16) "Family" means the following members of an individual's household whose principal place of abode is with the individual in a home the individual maintains or would maintain but for unemployment:

(i) A spouse;

(ii) An unmarried child, including a stepchild or adopted child, under age 21 or of any age if incapable of self-support because of mental or physical incapacity; and

(iii) Any other person for whom the individual would be entitled to a deduction for income tax under the Internal Revenue Code of 1954.

(17) "Good cause" means (except as used in an applicable State law) such reasons as would justify an individual's conduct when measured by conduct expected of a reasonable individual in like circumstances, including but not limited to reasons beyond the individual's control and reasons related to the individual's capability to

make satisfactory progress in or continue training.

(18) "Head of family" means an individual who maintains a home for a family. An individual maintains a home if over half the cost of maintenance is furnished by the individual or would be furnished but for unemployment.

(19) "Impact date" means the impact date stated in a certification.

(20) "Last separation" means the total or partial separation from adversely affected employment most recently preceding an individual's application for trade readjustment allowances as to which it is determined that the individual qualifies under § 91.7.

(21) "Layoff" means a suspension from pay status for lack of work initiated by an employer and expected to be for a definite or indefinite period of not less than 7 consecutive days.

(22) "Partial separation" means that during a week beginning on or after the impact date stated in an applicable certification an adversely affected worker who has not been totally separated had:

(i) Hours of work reduced to 80 percent or less of the individual's average weekly hours, and

(ii) Wages reduced to 80 percent or less of the individual's average weekly wages in adversely affected employment.

(23) "Qualifying period" means the 52 calendar weeks preceding an individual's appropriate week.

(24) "Remuneration" means wages and net earnings derived from service performed as a self-employed individual.

(25) "Secretary" means the Secretary of Labor of the United States.

(26) "State" includes the District of Columbia and Commonwealth of Puerto Rico, and the term "United States" when used in a geographical sense includes such Commonwealth.

(27) "State agency" means an agency administering a State law.

(28) "State law" means the unemployment insurance law of a State approved under section 3304 of the Internal Revenue Code of 1954 (26 U.S.C. 3304).

(29) "Total separation" means a layoff or severance of an individual from employment with a firm in which, or in a subdivision of which, adversely affected employment exists.

(30) "Trade readjustment allowance" means a weekly allowance payable to an adversely affected worker under Subpart B of this Part 91.

(31) "Trainee" means an individual undergoing a planned and systematic sequence of instruction to which the individual is referred under § 91.20 or which is approved for the individual under § 91.21 given under competent supervision designed to impart skills, knowledge, or abilities as to a specific occupation and which may include, as necessary, instruction in basic subjects given specially in relation to such occupation.

(32) "Training allowance" means a weekly cash allowance payable to a trainee under any Federal law for the training of workers, but does not include a payment under §§ 91.22 or 91.23.

(33) "Unemployment insurance" means cash benefits payable to an individual with respect to the individual's unemployment under any State law or Federal unemployment insurance law.

(34) "Vacation or holiday pay" means wages paid in connection with leave for vacation or holiday purposes and not representing remuneration for services performed during a week for which application is made for a trade readjustment allowance.

(35) "Wages" means all compensation for employment for an employer including commissions, bonuses, and the cash value of all compensation in a medium other than cash.

(36) "Week" means a week as defined in an applicable State law.

(37) "Week of unemployment" means as to an individual a week in which the individual's remuneration for services performed in such week is less than 80 percent of the individual's average weekly wage and in which, because of lack of work:

(i) If totally separated, the individual worked less than the full-time week (excluding overtime) in his or her current occupation, or

(ii) If partially separated, the individual worked 80 percent or less of his or her average weekly hours.

[40 FR 16304, Apr. 11, 1975; 40 FR 17840, Apr. 23, 1975]

Subpart B—Trade Readjustment Allowances

§ 91.6 Applications.

(a) An individual covered by a certification or petition for certification under § 90.16 of this title may apply at any time to a State agency for a trade readjustment allowance. Applications shall be in accordance with instructions and on forms approved by the Secretary which shall be furnished to the individual by the State agency. Determinations with respect to an application shall be made at any time to the extent necessary to establish or protect an individual's entitlement to a trade readjustment allowance or other adjustment assistance, but no payment of a trade readjustment allowance or other adjustment assistance may be made by a State agency until a certification is made under § 90.16 of this title and the State agency determines that the individual is covered thereby.

(b) The procedure for reporting and filing applications for trade readjustment allowances shall be consistent with this Part 91 and the Secretary's "Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services ("Employment Security Manual," Part V, Section 5000 et seq.).

§ 91.7 Qualifying requirements.

To qualify for a trade readjustment allowance an individual must meet each of the following requirements.

(a) *Certification.* The individual must be an adversely affected worker covered by a certification.

(b) *Separation.* The individual's last separation must occur:

(1) On or after the impact date;

(2) Before expiration of the 2 year period following the date of the certification;

(3) Before the termination date, if any, of the certification;

(4) Not more than one year before the date of the petition on which certification was granted, except as provided in section 246(b) of the Act; and

(5) Not before October 3, 1974, except as provided in section 246(b) of the Act.

(c) *Wages and employment.* In the 52 weeks preceding the individual's last separation the individual must have at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm or subdivision of a firm. Evidence that an individual meets this requirement shall be obtained as stated in § 91.8.

§ 91.8 Evidence of qualification.

(a) *State agency action.* When an individual applies for a trade readjustment allowance the State agency having jurisdiction under § 91.51(a) shall obtain information necessary to establish:

(1) Whether the individual meets the requirements of § 91.7; and

(2) The individual's average weekly wage, and for an individual claiming to be partially separated the average weekly hours and average weekly wage in adversely affected employment.

(b) *Wages and employment.* Wages and employment creditable under § 91.7(c) in determining whether an individual meets the requirements of § 91.7 shall not include employment or wages earned or paid for employment which is contrary to or prohibited by any Federal law.

(c) *Insufficient data.* If information specified in paragraph (a) of this section is not available from State agency records or from an employer, the State agency shall ask the individual to submit a statement setting forth, for an employer in the individual's qualifying period as to whom adequate information necessary to any determination is unavailable, such of the following information as it may request:

(1) Name and address of the employer.

(2) Beginning and ending dates of period of employment with such employer.

(3) Total wages earned from such employer.

(4) Number of weeks in the individual's qualifying period in each of which the individual earned $30 or more from a firm as to which a certifi-

cation has been made under § 90.16 of this title.

(5) The individual's wages in each of the first 4 of the last 5 completed calendar quarters preceding the individual's appropriate week or, if partial separation is claimed, preceding the week in which the individual claims to be partially separated.

(6) If the individual claims to be partially separated:

(i) Total hours (excluding overtime) worked by the individual in adversely affected employment; and

(ii) Total wages (excluding overtime wages) earned by the individual in the period of 52 calendar weeks (excluding any week in such period during which the individual was sick, on vacation, or otherwise not working) preceding the week in which the individual claims to be partially separated.

(7) Any other pertinent information.

(d) *Verification.* A statement made under paragraph (c) of this section shall be certified by the individual to be true to the best of the individual's knowledge and belief and shall be supported by evidence such as Forms W-2, paycheck stubs, union records, income tax returns, or statements of fellow workers.

(e) *Determinations.* The State agency shall make the necessary determinations on the basis of information obtained pursuant to this section, except that if, after reviewing information obtained under paragraph (c) of this section against other available data, including agency records, it concludes that such information is not reasonably correct, it shall make appropriate adjustments and shall make the determination on the basis of the adjusted data.

§ 91.9 Availability for work.

An individual shall not be paid a trade readjustment allowance for a week of unemployment in which the individual is not able to work or is unavailable for work under an applicable State law. This section does not apply to an individual for a week in which the individual is undergoing training under Subpart C of this part unless the individual is determined to be ineligible for such week under § 91.24.

§ 91.10 Disqualifications.

(a) *State law applies.* Except as stated in paragraphs (b) and (c) of this section, an individual shall not be paid a trade readjustment allowance for a week of unemployment for which the individual is or would be disqualified to receive unemployment insurance under an applicable State law.

(b) *Trainees.* A State law shall not be applied to disqualify an individual undergoing training under Subpart C of this part for:

(1) Undergoing training; or

(2) Refusal to accept or continue or failure to make satisfactory progress in training, and in lieu of such State law § 91.24 shall apply to the individual; or

(3) Refusal of work or referral to work if such work would require the individual to discontinue training or, if added to hours of training, would occupy the individual more than 8 hours a day or 40 hours a week, except that this subparagraph does not apply to an individual who has been given notice of a determination of ineligibility under § 91.24 unless and until the individual again makes satisfactory progress in training; or

(4) Quitting work if the individual was underemployed and it reasonably was necessary for the individual to quit work to begin or continue training, except that this subparagraph does not apply to an individual who has been given notice of a determination of ineligibility under § 91.24 unless and until the individual again makes satisfactory progress in training. For purposes of this subparagraph an individual is underemployed if:

(i) Working regularly below the individual's skill capacity, or

(ii) Working regularly less than full time in the individual's occupation, or

(iii) The individual has received notice that he or she will be laid off within 60 days.

(c) *Cancellation of wage credits.* No State law requiring cancellation of wage credits or reduction of benefit amounts or duration shall be applied to reduce the amount or duration of a trade readjustment allowance or allowances payable to an individual.

Such a State law shall be given effect as follows:

(1) If the State law requires, together with a reduction in either the number of weeks for which unemployment insurance may be paid or in the total amount of unemployment insurance payable, postponement of the payment of unemployment insurance for a specified number of weeks or for the duration of an individual's unemployment, payment of trade readjustment allowances to the individual shall be similarly postponed.

(2) If the State law does not require postponement but requires cancellation of all wage credits earned prior to the filing of a claim for unemployment insurance, payment of trade readjustment allowances to the individual shall be postponed for 20 weeks from the week in which the disqualifying act occurred. This subparagraph does not apply to an individual who has made a fraudulent application and paragraph (e) of this section shall apply in lieu thereof.

(d) *"Duration plus" disqualifications.* A State law disqualifying an individual for unemployment insurance until the individual has earned a specified amount in employment covered under the State law or an amount expressed as a multiple of the individual's weekly benefit amount shall be applied to an individual applying for a trade readjustment allowance by postponing payment of such allowance until the individual has earned the specified amount or amount expressed as a multiple of the weekly benefit amount (computed on the basis of the weekly benefit amount payable under the State law if the individual was claiming unemployment insurance, entitled thereto, and not disqualified) in any employment, whether or not covered under the State law.

(e) *Fraud.* If a State law disqualification provision for fraud requires denial of unemployment insurance for the remainder of an individual's benefit year and the individual has no current benefit year when determined to have filed a fraudulent application for adjustment assistance, the individual shall not receive trade readjustment allowances or other payments of adjustment assistance for 20 weeks from the week in which the determination of fraud was made. If a State law disqualification provision for fraud requires denial of unemployment insurance for the remainder of an individual's benefit year and one or more subsequent benefit years, the individual shall not receive trade readjustment allowances or other payments of adjustment assistance for 40 weeks from the week in which the determination of fraud was made, whether or not the individual has a current unemployment insurance benefit year when determined to have filed a fraudulent application.

§ 91.11 Weekly amounts.

(a) *Regular allowance.* The amount of trade readjustment allowance payable to an individual for a week of unemployment (including a week of training) occurring after the impact date shall be 70 percent of the individual's average weekly wage, except that if the amount payable exceeds the average weekly manufacturing wage the amount payable shall be the average weekly manufacturing wage. The amount determined under the preceding sentence shall be adjusted as provided in this section.

(b) *Increased allowance.* An individual in training under Subpart C of this Part 91 entitled for a week to a training allowance under any Federal law in a greater amount than the amount provided in paragraph (a) of this section (whether or not the individual filed a claim for such training allowance) shall receive the greater amount as a trade readjustment allowance. A payment under this paragraph shall be in lieu of any other training allowances to which the individual is entitled under such Federal law.

(c) *Reduction of amount.* An amount payable under paragraph (a) or (b) of this section shall be reduced by:

(1) 50 percent of the individual's remuneration for services performed in such week (including wages for on-the-job training), and

(2) The amount of unemployment insurance the individual receives or would receive for such week if a claim for unemployment insurance was filed, except that if the appropriate State or

Federal agency finally determines that an individual was not entitled to unemployment insurance for such week no reduction shall be made under this paragraph, and

(3) The amount of a training allowance (other than a training allowance referred to in paragraph (b) of this section) under any Federal law which the individual receives or would receive if a claim were filed for such week, except that if it is finally determined that an individual was not entitled to a training allowance for such week no reduction shall be made under this subparagraph, and

(4) For each day of absence without good cause from training by an amount computed by dividing the trade readjustment allowance to which the individual otherwise would be entitled by the number of days of training normally scheduled in the week. Holidays which otherwise would be days of training shall be deemed days of training normally scheduled for purposes of this subparagraph.

(d) *General limitation.* The amount otherwise payable under paragraph (a) or (b) of this section after adjustment pursuant to paragraph (c) of this section shall be reduced by deducting therefrom a general limitation amount. A general limitation amount is the amount remaining after:

(1) Determining the total amount payable to an individual for a week for which a trade readjustment allowance is sought as:

(i) Remuneration for services performed in such week, and

(ii) Unemployment insurance for such week, and

(iii) Training allowance under any Federal law for such week, and

(iv) The amount otherwise payable under paragraph (a) or (b) of this section after adjustment under paragraph (c) of this section for such week, and

(2) Deducting from the total amount determined under paragraph (d)(1) of this section the lesser of:

(i) 80 percent of the individual's average weekly wage, or

(ii) 130 percent of the average weekly manufacturing wage.

(e) *Rounding.* An amount payable under this section which is not a multiple of a dollar shall be rounded to the next higher multiple of a dollar.

§ 91.12 Duration.

(a) *General rule.* Except as stated in paragraph (b) of this section an individual may not receive a trade readjustment allowance for—

(1) More than 52 weeks of unemployment beginning on or after an impact date, or

(2) A week of unemployment beginning more than 2 years after the beginning of the individual's appropriate week.

(b) *Additional weeks.* An individual ineligible to receive a trade readjustment allowance because of paragraph (a) of this section may receive trade readjustment allowances for not more than 26 additional weeks of unemployment in the following cases:

(1) *Trainees.* To assist the individual to complete training begun prior to ineligibility under paragraph (a) of this section in which the individual is making satisfactory progress and for which a bona fide application was made at least 180 days after the end of the appropriate week or date of the certification, whichever is later. In determining whether additional trade readjustment allowances shall be paid under this subparagraph, consideration shall be given to, when, and under what circumstances the training was initiated, the length of the normal course for similar training, the number of hours a day and days a week in which the individual is undergoing training, and any other pertinent factors.

(2) *Workers age 60.* If an individual became 60 years old on or before the individual's last separation. Weeks of unemployment for which the individual received a trade readjustment allowance under subparagraph (1) of this paragraph shall be deducted from the 26 additional weeks for which an individual aged 60 or more may receive trade readjustment allowances under this subparagraph.

(c) *Maximums.* In no case may an individual receive a trade readjustment allowance for more than 78 weeks beginning on or after an impact date or for a week of unemployment beginning more than 3 years after the beginning of the individual's appropriate week.

(d) *Computation.* If unemployment insurance or a training allowance is paid to an individual for any week of unemployment as to which the individual would be entitled, determined without regard to paragraphs (c) or (d) of § 91.11 or any disqualification under § 91.24, to a trade readjustment allowance if the individual applied for such trade readjustment allowance, each such week shall be deducted from the total number of weeks for which a trade readjustment allowance may be paid under this section when the individual applies for and is determined to be entitled to a trade readjustment allowance.

§ 91.13 Workers on vacation.

(a) *Ineligibility.* An individual is not unemployed because of lack of work for purposes of § 91.3(a)(37) in a week for which the individual applies for a trade readjustment allowance if the individual:

(1) Was on leave for vacation or holiday purposes during all or part of such week, and

(2) Received vacation or holiday pay as defined in § 91.3(a)(34) which, when allocated to all or part of such week under paragraph (b) of this section, equalled or exceeded the amount of a trade readjustment allowance which, but for this paragraph, would be payable for such week.

(b) *Allocation.* Vacation or holiday pay shall be allocated in equal amounts to each day on which an individual was on leave for vacation or holiday purposes.

(c) *Accrued leave.* Vacation or holiday pay which is paid in connection with a total separation (including a layoff without a definite date of return to work) shall be disregarded in determining whether an individual has experienced a week of unemployment, whether paid before or after separation.

§ 91.14 Applicable State law.

(a) *What law governs.* With respect to each last separation of an individual, the applicable State law for purposes of §§ 91.9 and 91.10 is:

(1) The State law under which the individual is entitled to unemployment insurance, regardless of whether the individual has claimed unemployment insurance; or

(2) If the individual is not entitled to unemployment insurance, the State law of the State in which the individual's last separation occurred.

(b) *Change of law.* (1) A State law determined under paragraph (a) of this section shall remain applicable to an individual until:

(i) The individual becomes entitled to unemployment insurance under another State law; or

(ii) If the individual does not become entitled to unemployment insurance, the individual has a total or partial separation in another State.

(2) If a State law ceases to apply to an individual, the applicable State law thereafter shall be the law of the State in which the individual became entitled to unemployment insurance, whether or not the individual has filed a claim for unemployment insurance.

(c) *UCFE-UCX claimants.* If an individual is entitled to unemployment insurance under title 5, chapter 85, United States Code, the applicable State law for purposes of paragraphs (a) and (b) of this section is the law of the State to which the individual's Federal service and wages were assigned under 20 CFR 609.15 or 614.3.

Subpart C—Training and Employability Services

§ 91.17 Employment service functions.

To assure readjustment as promptly and effectively as possible, an adversely affected worker totally separated from employment shall be referred by the State agency to an appropriate office of the State employment service. Unless the worker submits to the State agency a written statement of reasons why employment services are not desired and such statement is approved by the State agency, a worker so referred shall:

(a) Register for work;

(b) Be informed of potential entitlement to job search allowances under Subpart E of this Part 91 and to relocation allowances under Subpart D of this Part 91;

(c) Be afforded, as appropriate, testing, counseling, job referral, and other placement services provided by any Federal law, including supportive and other services such as work orientation, basic education, communication skills, employment skills, and minor health services necessary to prepare the worker for full employment in accordance with the worker's capabilities and job opportunities; and

(d) If suitable employment is not otherwise available and the worker's employability would be improved thereby, the worker may be selected or referred to training as provided in §§ 91.18, 91.19, 91.20, or 91.21.

(e) Applications: Applications for selection for, approval of, or referral to training shall be in accordance with instructions and on forms approved by the Secretary, which shall be furnished to an individual by a State agency or State employment service.

(f) Determinations: Selection for, approval of, or referral of an individual to training under this Subpart C, or a decision with respect to any specific training of nonselection, non-approval, or non-referral for any reason shall be a determination to which §§ 91.51 through 91.54 apply.

§ 91.18 Worker retraining plans.

(a) *Establishment.* To the extent practicable before referring adversely affected workers to training or approving training for such workers the Secretary, or at his request a State employment service, shall consult with such workers' firm and their certified or recognized union or other authorized representative for the purpose of developing a worker retraining plan to meet the manpower needs of such firm and to preserve or restore the employment relationship between the workers and such firm. The fact there is not otherwise a need in the area to train workers in a specific occupation shall not preclude development of a worker retraining plan as to such occupation for workers of the firm.

(b) *Methods.* Worker retraining plans may provide for either or a combination of the following methods of training:

(1) On-the-job training in the facilities of the firm or elsewhere pursuant to §§ 91.19, 91.20, and 91.21, including training for which the firm pays the costs; and

(2) Vocational training other than on-the-job training pursuant to §§ 91.19, 91.20, and 91.21.

(c) *Selection and referral.* To the extent consistent with this section, selection and referral of individuals designated in a worker retraining plan shall be in accordance with § 91.19.

(d) *On-the-job training.* When a worker retraining plan provides for on-the-job training described in paragraph (b)(1) of this section, 29 CFR 95.33(d)(2) shall apply.

§ 91.19 Preferred training.

(a) *Suitable training.* A State employment service shall refer an adversely affected worker selected for training which is provided at no cost to the worker or to the Adjustment Assistance Trust Fund under:

(1) The Comprehensive Employment and Training Act of 1973, as amended, as implemented by Parts 94 through 98 of this title, offered by a prime sponsor; or

(2) If suitable training under paragraph (a)(1) of this section cannot be provided or is not available, under any other applicable law.

(b) *Applicable standards.* The standards, procedures, and requirements of the training program to which a worker is referred under this section shall apply to the worker.

(c) *Fees prohibited.* In no case shall a worker be referred to training under this section for which the worker is required to pay a fee or tuition.

§ 91.20 Purchased training.

If the State employment service determines that placement of an adversely affected worker in suitable training under § 91.19 cannot otherwise be accomplished, the State employment service shall reimburse the agency or prime sponsor operating the training program for the cost of such training. The State employment service may make arrangements or agreements for such reimbursement, and such arrangements or agreements may include provision for placement of such workers in such training although such workers do not meet the generally applicable eligibility requirements for such programs.

§ 91.21 Approval of other training.

A State employment service may approve and purchase for an adversely affected worker any other training, including on-the-job training or institutional training, the individual may wish to undertake if:

(a) Circumstances preclude referral to training under § 91.19 or § 91.20; and

(b) If institutional vocational training, the training has been approved by the State vocational education agency as meeting the standards of adequacy required by the applicable law.

§ 91.22 Subsistence payments.

(a) *Eligibility.* A trainee under this Subpart C may be afforded supplemental assistance necessary to pay costs of separate maintenance when the training facility is located outside the commuting area, but may not receive such supplemental assistance for any period for which the trainee receives such a payment under the Comprehensive Employment and Training Act of 1973, as amended, or any other law, or for any day referred to in § 91.23(c)(3) pursuant to which a transportation allowance is payable to the worker.

(b) *Amount.* Subsistence payments shall be not more than $15 a day, except that if a training facility furnishes or makes available lodging and meals to trainees at a rate of $12 or less a day the subsistence payment shall not exceed the amount charged for those accommodations plus $3 a day for incidentals. In determining the amount of a subsistence payment the exact days, including the days of departure and return, which elapse between the day the trainee departs for the training facility to the day the trainee returns shall be taken into account.

(c) *Applications.* Applications for payment of subsistence shall be in accordance with instructions and on forms approved by the Secretary and furnished to the trainee by a State agency or State employment service. Such payments shall be made on completion of a week of training, except that at the beginning of a training project a State agency may advance a payment for a week if it determines that such advance is necessary to enable a trainee to accept training. An adjustment shall be made if the amount of an advance exceeds the amount to which the trainee is entitled under paragraph (b) of this section. A determination as to an application made under this section shall be subject to §§ 91.51 through 91.54.

§ 91.23 Transportation payments.

(a) *Eligibility.* A trainee under this Subpart C shall be afforded supplemental assistance necessary to pay transportation expenses if the training is outside the commuting area, but may not receive such assistance if transportation is arranged for the trainee as part of a group and paid for by the State agency or to the extent the trainee receives a payment of transportation expenses under another Federal law.

(b) *Amount.* A transportation allowance shall not exceed 12 cents a mile for travel by the least expensive means of transportation reasonably available between the trainee's home and the training facility.

(c) *Travel included.* Travel for which a transportation allowance may be paid shall include travel: (1) At the beginning and end of the training program; (2) when the trainee fails to complete the training program for any reason; and (3) for daily commuting, in lieu of subsistence, but not exceeding the amount otherwise payable as subsistence for each day of commuting.

(d) *Applications.* Applications for transportation payments shall be made in accordance with instructions and on forms approved by the Secretary and furnished to trainees by a State agency or State employment service. Payment may be made in advance. A determination as to an application made under this section shall be subject to §§ 91.51 through 91.54.

§ 91.24 Refusal of training.

A trainee under this Subpart C who, without good cause, refuses to accept or continue or fails to make satisfactory progress in such training shall not be paid a trade readjustment allowance for any week of unemployment thereafter until the week in which the trainee enters, resumes, or makes satisfactory progress in such training. Any disqualification under § 91.10(b) (3) or (4) imposed on a trainee for or during a period of ineligibility under this section shall cease to apply as of the week in which the trainee enters, resumes, or makes satisfactory progress in such training.

Subpart D—Relocation Allowances

§ 91.28 General.

A relocation allowance shall be granted an adversely affected worker to assist the individual and the individual's family, if any, to relocate within the United States as stated in this Subpart D. A relocation allowance shall not be granted an individual more than once in a benefit period. A relocation allowance shall not be granted to more than one member of a family with respect to the same relocation. If applications for a relocation allowance are made by more than one member of a family as to the same relocation the allowance shall be paid to the head of the family if otherwise eligible.

§ 91.29 Eligibility.

(a) *Conditions.* To be eligible for a relocation allowance a worker must:

(1) Apply for such allowance, before relocating and regardless of whether a certification covering the worker has been made under Part 90 of this title, in accordance with instructions and on forms approved by the Secretary which shall be furnished to the individual by the State agency;

(2) Be entitled to a trade readjustment allowance for the week in which the application for such allowance is filed, unless the individual is not entitled to a trade readjustment allowance for such week solely because:

(i) The individual has obtained the employment referred to in paragraph (a)(7) of this section, or

(ii) The amount of the trade readjustment allowance has been adjusted to zero under § 91.11, or

(iii) The individual is not yet covered by a certification;

(3) Have been totally separated from adversely affected employment;

(4) Not previously have received a relocation allowance during the applicable benefit period;

(5) Intend to relocate within the United States;

(6) Be found under § 91.31 to have no reasonable expectation of securing suitable employment in the commuting area;

(7) Be found under § 91.31 to have obtained suitable employment or a bona fide offer of suitable employment in the area of intended relocation; and

(8) Relocate within a reasonable period, as determined under § 91.30, after applying for the relocation allowance or, if undergoing training, after the conclusion of training.

(b) *Job search.* Applications for a relocation allowance and a job search allowance may not be approved concurrently, but payment of a job search allowance shall not otherwise prevent payment of a relocation allowance.

(c) *Relocation before application.* An application for a relocation allowance made after relocation takes place cannot be granted.

§ 91.30 Time of relocation.

(a) *Applicable considerations.* In determining an individual's eligibility under § 91.29(a)(8) a State agency, among other factors, shall consider whether:

(1) Suitable housing is available in the area of relocation;

(2) The individual can dispose of the individual's residence;

(3) The individual or a family member is ill; and

(4) A member of the individual's family is attending school and when the member best can be transferred to a school in the area of relocation.

(b) *Time limits.* The reasonable period for relocation under

§ 91.29(a)(8) shall expire 6 months from the date of application for a relocation allowance or after the conclusion of training, as the case may be, unless the individual has good cause for extension of the period. In no event may such period extend beyond 12 months from the date of application or conclusion of training.

§ 91.31 Findings required.

The following findings must be made before a relocation allowance may be granted.

(a) *Intrastate relocations.* If the area of relocation is in the State where the individual resides, the Director of the employment service of the State must find that the individual is eligible under §§ 91.29(a)(6) and (7).

(b) *Interstate relocations.* If the area of relocation is not in the State where the individual resides:

(1) The Director of the employment service of the State where the individual resides must find that the worker is eligible under § 91.29(a)(6); and

(2) The Director of the employment service of the State of intended relocation must find that the individual is eligible under § 91.29(a)(7).

§ 91.32 Amount.

The amount payable as a relocation allowance shall be:

(a) 80 percent, computed under § 91.33, of reasonable and necessary travel expenses from the individual's place of residence to the intended area of relocation, plus

(b) 80 percent, computed under § 91.34, of the expense of moving household goods and personal effects, not to exceed 11,000 pounds net weight, between such locations, plus

(c) A lump sum, not exceeding $500, equal to 3 times the individual's average weekly wage.

§ 91.33 Travel allowance.

(a) *Computation.* The amount of travel allowance payable under § 91.32(a) shall be computed as follows.

(1) *Commercial carrier.* For travel by commercial carrier an individual shall receive 80 percent of the expenses of such travel for the individual and family, if any, by the most economical public transportation the individual and family reasonably can be expected to take from the individual's residence to the individual's new residence in the area of relocation.

(2) *Automobile.* For travel by private automobile an individual shall receive 9.6 cents a mile over the usually traveled route from the individual's residence to the worker's new residence in the area of relocation. No additional mileage shall be payable for family members traveling on the same trip in the same automobile. An individual claiming mileage under this subparagraph may not claim also a travel allowance under paragraph (a)(1) of this section, either for the individual or a family member, except as stated in paragraph (a)(3) of this section.

(3) *Separate travel.* If for good cause a member or members of an individual's family must travel separately to the individual's new residence the individual shall be paid:

(i) If travel is by private automobile, the lesser of 9.6 cents a mile for the usual route or 80 percent of the cost of transporting all such family members who travel in the same automobile by the most economical public transportation that reasonably can be taken; or

(ii) If travel is by commercial carrier, 80 percent of the cost of transportation by the most economical public transportation that reasonably can be taken.

(b) *Limitation.* In no case may the individual be paid a travel allowance for the individual or a member of the individual's family more than once in connection with a single relocation.

§ 91.34 Moving allowance.

(a) *Computation.* The amount of a moving allowance payable under § 91.32(b) shall be computed as follows.

(1) *Commercial carrier.* For transportation of household goods and personal effects, not exceeding 11,000 pounds net weight, of an individual and family, if any, by commercial carrier from the individual's residence to the individual's new residence in the area of relocation, the individual shall be paid 80 percent of the cost of such transportation, including accessorial

charges found reasonable and necessary by the State agency, by the most economical commercial carrier the individual reasonably can be expected to use. Before undertaking such transportation the individual must submit to the State agency an estimate from a commercial carrier as to the cost thereof. Accessorial charges shall include the cost of insuring such goods and effects for their actual value or $10,000, whichever is least, against loss or damage in transit, if a bid from a licensed insurer is obtained by the individual and approved by the State agency before departure. If a State agency finds it is more economical to pay a carrier an extra charge to assume the responsibility of a common carrier for such goods and effects, 80 percent of such extra charge, but not exceeding $50, shall be paid in lieu of the cost of insurance.

(2) *Trailer.* If household goods and personal effects are moved by trailer or house trailer used as a home the individual shall be paid:

(i) 9.6 cents a mile if the trailer or house trailer is hauled by private automobile, or

(ii) 80 percent of the charge, not exceeding 20 cents a mile, if hauling is by commercial carrier; and

(iii) If the trailer is rented and of the type customarily used for transporting household goods and personal effects, 80 percent of the rental fee, not exceeding 20 cents a mile, for each day reasonably required to complete the transportation.

(b) *Travel.* Payments under this section shall be in addition to payments under § 91.32(a). Mileage computations under this section shall be made on the basis of the most usual route between points of departure and destination.

§ 91.35 Time and method of payment.

(a) *Determinations.* A State agency shall promptly make and record determinations necessary to assure an individual's entitlement to a relocation allowance at any time, whether before or after a certification covering the individual is made. No relocation allowance may be paid an individual until the State agency determines that the individual is covered by a certification. If delay in payment occurs under the preceding sentence a State agency shall make payment as promptly as possible upon determining that the individual is covered by a certification and otherwise eligible.

(b) *Travel and moving allowances.* Allowances computed under §§ 91.33 and 91.34 shall be paid as follows.

(1) *Travel.* Unless paragraph (a) of this section applies, the amount computed under § 91.33 shall be paid at the time an individual departs from the individual's residence to begin relocation or within 10 days prior thereto. An amount payable for a family member traveling separately may be paid to the individual at the time of such family member's departure or within 10 days prior thereto.

(2) *Moving.* Unless paragraph (a) of this section applies, the amount computed under § 91.34 shall be paid:

(i) *Auto with trailer.* If travel is by private automobile and trailer, at the time payment is made under paragraph (b)(1) of this section.

(ii) *Rented trailer.* If travel is by private automobile and rented trailer:

(A) The individual shall submit an estimate of the rental cost from the rental agency, and

(B) 80 percent of such estimated rental cost, not exceeding 20 cents a mile, shall be advanced by check payable to the order of the rental agency at the time of departure or within 10 days prior thereto, and

(C) On completion of travel the individual shall submit promptly to the State agency a receipted bill itemizing and evidencing payment of 80 percent of the rental charges for the trailer and shall reimburse the State agency for the amount, if any, by which the advance made for trailer rental exceeded 80 percent of the rental charges approved by the State agency. If the amount of an advance was less than 80 percent of rental charges or less than 80 percent of mileage at 20 cents a mile, whichever is less, the individual shall be paid the difference.

(iii) *Commercial carrier.* (A) If household goods and personal effects are moved by commercial carrier, 80 percent of the amount of the estimate submitted by the individual under § 91.34(a)(1) as approved by the State agency covering the cost of such transportation and 80 percent of insurance costs approved by the State agency under § 91.34(a)(1) shall be advanced by checks payable to the carrier and insurer delivered to the individual at the time of the scheduled shipment or within 10 days prior thereto. On completion of transportation the individual promptly shall submit to the State agency a copy of the bill of lading prepared by the carrier, including a receipt evidencing payment of transportation costs. The individual shall with such submittal reimburse the State agency the amount, if any, by which the advance made to him exceeds 80 percent of transportation costs. The individual shall be paid the difference, if any, if the amount advanced was less than 80 percent of the transportation costs approved by the State agency.

(B) If economy of administration will result a State agency may make direct arrangements for transportation and insurance of an individual's household goods and personal effects with a carrier and insurer selected by the individual and may make payment of 80 percent of transportation and insurance costs directly to the carrier and insurer. No such arrangement shall release a carrier from liability otherwise provided by law for loss or damage to an individual's goods and effects.

(iv) *Trailer commercially hauled.* If household goods and personal effects are transported by trailer hauled by a commercial carrier the individual shall submit to the State agency an estimate of the cost of the hauling from a commercial carrier. A check for 80 percent of the amount of the estimate, if approved, but not exceeding 20 cents a mile, payable to the carrier, may be delivered to the individual at the time of the scheduled transportation or within 10 days prior thereto.

(c) *Lump sum allowance.* The lump sum allowance provided in § 91.32(c) shall be paid when arrangements are completed for relocation of the individual and family, if any, but not more than 10 days before the anticipated date of shipment of the individual's household goods and personal effects.

§ 91.36 Overpayment of relocation allowance.

(a) *Repayment required.* If an individual fails without good cause to complete a relocation, any payment under § 91.32 constitutes an overpayment.

(b) *Relocation completed.* A relocation is completed when an individual and family, if any, and their household goods and personal effects arrive at the individual's home in the area of relocation. If no household goods are transported a relocation is completed when the individual and family, if any, actually move to the area of relocation and establish a new residence. Failure of a member of an individual's family to move does not mean a relocation was not completed if there was good cause for the failure, unless the member is the only member of the individual's family.

(c) *Collection.* An overpayment determined under this section shall be collected as stated in § 91.58.

Subpart E—Job Search Allowances

§ 91.40 General.

A job search allowance shall be granted an adversely affected worker to assist the individual in securing a job within the United States as stated in this Subpart E.

§ 91.41 Applications.

(a) *Forms.* An application for a job search allowance shall be made in accordance with instructions and on forms approved by the Secretary which shall be furnished to an individual by a State agency or State employment service.

(b) *Submittal.* An application may be submitted to a State agency at any time regardless of whether a certification covering the individual has been made.

(c) *Time limits.* Notwithstanding paragraph (b) of this section, an application for a job search allowance may not be granted if submitted more than one year after the date of an individual's last total separation or later than 6 months after completion of training under Subpart C of this Part 91.

§ 91.42 Eligibility.

(a) *Conditions.* To be eligible for a job search allowance an individual must:

(1) File a timely application;

(2) Have been totally separated from adversely affected employment;

(3) Be referred to the State employment service which shall furnish the individual such employment services as are appropriate as provided in § 91.17;

(4) Have no reasonable expectancy of securing suitable employment in the commuting area;

(5) Have received a bona fide referral to suitable employment outside the commuting area or have a reasonable expectancy of obtaining suitable employment of long term duration in the area where the job search will be conducted; and

(6) Complete the job search within a reasonable period, not exceeding 30 days, after the day on which the job search began.

(b) *Completion of search.* A job search is deemed completed when the individual either secures employment or has contacted each employer to whom referred by the employment service in connection with a job search.

§ 91.43 Findings required.

Before an application under § 91.41 may be approved the following findings must be made.

(a) The State agency having jurisdiction under § 91.51(a) must find that the individual meets the requirements of § 91.42(a)(2).

(b) The Director of the employment service of the State where the individual resides must find that:

(1) The application was submitted within the time stated in § 91.41(c);

(2) The worker meets the requirements of § 90.42(a) (4) and (5), and such finding shall state the basis thereof;

(3) There is reasonable expectancy the individual can obtain the employment sought; and

(4) The beginning date and date on or before which the job search should be completed.

§ 91.44 Amount.

(a) *Computation.* The amount of a job search allowance shall be 80 percent of the total of the following items:

(1) *Commercial carrier.* If travel is by commercial carrier, the cost of such travel by the most economical public transportation the individual reasonably can be expected to take from the individual's residence to the area of job search.

(2) *Automobile.* If travel is by private automobile, 12 cents a mile for travel by the usual route from the individual's residence to the area of job search.

(3) *Lodging.* The individual's cost of lodging while engaged in job search, not exceeding $12 a day.

(4) *Meals.* The cost of the individual's meals while engaged in job search, not exceeding $5 a day.

(b) *Limit.* The total job search allowance paid an individual in a benefit period may not exceed $500.

§ 91.45 Time and method of payment.

(a) *Determinations.* A State agency promptly shall make determinations necessary to assure entitlement of an individual to a job search allowance at any time, whether before or after a certification covering the individual is made. No job search allowance may be paid or advanced to an individual until the State agency determines that the individual is covered by a certification. If delay in payment occurs under the preceding sentence a State agency shall make payment as promptly as possible on determining that the individual is covered by a certification and otherwise eligible.

(b) *Payment.* Unless paragraph (a) of this section applies, a job search allowance shall be paid promptly after an individual completes a job search and complies with § 91.46.

(c) *Advances.* A State agency may advance to an individual (except an individual not yet covered by a certification) within 5 days prior to commencement of a job search 60 percent of the estimated amount of the job search allowance payable on completion of job search, but not exceeding $300. Such advance shall be deducted from a payment under paragraph (b) of this section.

§ 91.46 Worker evidence.

On completing a job search an individual shall certify on forms furnished by the State agency as to employer contacts made and amounts expended daily for food and lodging.

§ 91.47 Overpayment of job search allowance.

If an individual fails without good cause to complete a job search any payment under § 91.45 constitutes an overpayment. Such overpayment shall be collected as stated in § 91.58.

Subpart F—Administration

§ 91.51 Determinations.

(a) *Jurisdiction.* The State agency whose State law is the applicable State law under § 91.14 shall determine an individual's entitlement to adjustment assistance under this Part 91, and make necessary payments, and may accept for such purpose information and findings supplied by another State agency under this Part 91.

(b) *Redeterminations.* A determination under paragraph (a) of this section may be reconsidered by a State agency under the same terms and conditions as a determination on a claim for unemployment insurance under the State law.

(c) *Use of State law.* In making determinations or redeterminations under this section, or in reviewing such determinations or redeterminations under § 91.52 a State agency, a hearing officer, or a court shall apply the regulations in this Part 91 and the substantive provisions of the Act. As to matters not otherwise specifically provided for in these regulations or the Act, a State agency, a hearing officer, or a court may apply the applicable State law and regulations thereunder, including procedural requirements of such State law or regulations, except so far as such State law or regulations are inconsistent with this Part 91 or the Act or the purposes of this Part 91 or the Act.

(d) *Agent of United States.* In making determinations, redeterminations, and in connection with proceedings for review thereof a State agency which has executed an agreement as provided in § 91.63 shall be an agent of the United States and shall carry out fully the purpose stated in § 91.2.

(e) *Notice.* The State agency shall notify the individual in writing of any determination or redetermination as to entitlement to adjustment assistance. Each determination or redetermination shall inform the individual of the right to reconsideration or appeal in the same manner as a determination under the State law.

(f) *Procedure.* Except where otherwise required by the Act or this Part 91, the procedures for making and furnishing determinations and written notices of determinations to individuals, shall be consistent with the Secretary's "Standard for Claim Determinations-Separation Information," ("Employment Security Manual," Part V, section 6010 et seq.)

§ 91.52 Appeals.

A determination or redetermination under this Part 91 shall be subject to review in the same manner and to the same extent as determinations under the applicable State law and only in that manner and to that extent. Proceedings for review of a determination or redetermination may be consolidated or joined with proceedings for review of a determination or redetermination under the State law where convenient or necessary. Procedures as to the right of appeal and opportunity for fair hearing shall be consistent with sections 303(a)(1) and (3) of the Social Security Act (42 U.S.C. 503(a)(1) and (3)).

§ 91.53 Promptness.

A State agency shall make full payment of adjustment assistance when due with the greatest promptness administratively feasible. Appeals under § 91.52 shall be decided with a degree of promptness meeting 20 CFR Part 650. Any provision of an applicable State law for advancement or priority of unemployment insurance cases on judicial calendars, or otherwise intended to provide for prompt payment of unemployment insurance when due, shall apply to proceedings involving entitlement to adjustment assistance under this Part 91.

§ 91.54 Uniform interpretation.

To assure uniform interpretation and application of this Part 91 throughout the United States a State agency shall submit, not later than 10 days after issuance, to the Manpower Administration of the United States Department of Labor a copy of any judicial or administrative decision reviewing a determination or redetermination under this Part 91. The material submitted shall be certified as accurate by a responsible official, employee, or counsel of a State agency on a form prescribed by the Secretary. If the Secretary believes a determination or decision inconsistent with this Part 91 or the Act, the Secretary may at any time inform the State agency that the United States Department of Labor does not acquiesce therein. Thereafter the State agency shall appeal if possible, shall not follow such determination or decision as a precedent, and in any subsequent proceedings which involve such determination or decision, or wherein such determination or decision is cited as precedent or otherwise relied upon, the State agency shall inform the hearing officer or court of the reason for its nonacquiescence and shall make all reasonable efforts, including appeal or other proceedings before any court having jurisdiction, to obtain modification, limitation, or overruling of such precedent. A State agency may request reconsideration of a notice of nonacquiescence and shall be given opportunity to present views and argument if desired. Acquiescence of the United States Department of Labor in a determination or decision shall not be presumed from absence of comment. If the highest State court having jurisdiction renders by a decision which becomes final a precedent in which the United States Department of Labor does not acquiesce, a decision shall be made by the Secretary as to whether § 91.63(e) shall be applied.

§ 91.55 Subpenas.

A State agency may issue subpenas for attendance of witnesses and production of records on the same terms and conditions as under the State law. Compliance may be enforced on the same terms and conditions as under the State law, or, if a State court declines to enforce a subpena issued under this section, the State agency may petition for an order requiring compliance with such subpena to the United States district court within the jurisdiction of which the relevant proceeding under this Part 91 is conducted.

§ 91.56 Reports.

A State agency shall furnish to the Secretary such information and reports and make such studies as the Secretary decides are necessary or appropriate for carrying out the purposes of the Act and this Part 91.

§ 91.57 State agency rulemaking.

A State agency may establish supplemental procedures not inconsistent with the Act or this Part 91 or procedures prescribed by the Secretary to further effective administration of this Part 91. The exact text of such supplemental procedure or procedures, certified as accurate by a responsible official, employee, or counsel of the State agency, shall be submitted to the Manpower Administration, United States Department of Labor, on a form supplied by the Secretary. No supplemental procedure shall be effective unless and until approved by the Secretary. Approval may be granted on a temporary basis, not to exceed 90 days, in cases of administrative necessity. On reasonable notice to a State agency approval of a supplemental procedure may be withdrawn at any time. If public notice and opportunity for hearing would be required under a State law for adoption of a similar or analogous procedure involving unemployment insurance, such public notice and opportunity for hearing shall be afforded by the State agency as to the supplemental procedure.

§ 91.58 Overpayments.

(a) *Fraud.* If a cooperating State agency or the Secretary, or a court or competent jurisdiction finds that any person—

(1) Has made or caused to be made by another, a false statement or representation of a material fact knowing it to be false, or has knowingly failed or caused another to fail to disclose a material fact; and

(2) As a result of such action has received any payment under this Part 91 to which the person was not entitled, such person shall be liable to repay such amount to the State agency or the Secretary, as the case may be, or either may recover such amount by deductions from any sums payable to such person under this Part 91.

(b) *Absence of fraud.* Except as provided in §§ 91.36 and 91.47, if there has been an overpayment to any person but no finding by a State agency, the Secretary, or a court of competent jurisdiction has been made that there was an intent to defraud, the determinations specified below shall be made on the same basis as similar determinations as to overpayments of unemployment insurance are made under the applicable State law:

(1) Whether the person shall be liable to repay such overpayment in cash, or

(2) Whether the person shall be permitted to offset any future amounts payable to such person under the Act, or

(3) Whether a waiver of such overpayment may be permitted.

(c) *Deposit.* Any amount repaid to a State agency under this section shall be deposited into the fund from which payment was made. Any amount repaid to the Secretary under this paragraph shall be returned to the Secretary of the Treasury and credited to the Adjustment Assistance Trust Fund.

(d) *Procedures.* Procedures for determination of overpayment, and opportunity for hearing thereon, shall accord with procedures under the State law for determinations and hearings with respect to overpayments under the State law, and shall be consistent with sections 303(a) (1) and (3) of the Social Security Act (42 U.S.C. 503(a) (1) and (3)).

(e) *Detection.* Procedures of a State agency as to detection and prevention of fraudulent overpayments of adjustment assistance shall be consistent, at a minimum, with the procedures adopted by a State with respect to unemployment insurance which are consistent with the Secretary's "Standard for Fraud and Overpayment Detection," ("Employment Security Manual," Part V, section 7510 et seq.).

§ 91.59 Waiver of rights void.

An agreement by an individual to waive, release, or commute any right to adjustment assistance or other right under the Act or this Part 91 shall be void. No employer shall discriminate in regard to the hiring or tenure of work or any term or condition of work of an individual on account of an application for adjustment assistance under this Part 91, or in any manner obstruct or impede an application for adjustment assistance.

§ 91.60 Exemption.

Any assignment, pledge, or encumbrance of any right to adjustment assistance which is or may become due and payable under this Part 91 shall be void; and such right to adjustment assistance shall be exempt from levy, execution, attachment, garnishment, order for the payment of attorney fees, offset or recovery of overpayments under any law other than the Act, or any other remedy whatsoever provided for the collection of debt whether owed to the United States, a State, or a person; and adjustment assistance received by an individual shall be exempt from any remedy whatsoever for the collection of all debts, except necessaries furnished to such individual or the individual's family during the time when such individual was unemployed. Any waiver of the exemption provided for in this section shall be void.

§ 91.61 Disclosure of information.

Except where a public hearing has been held under § 91.52 with respect to such individual, the identity of an individual who has applied for adjustment assistance shall be held confidential by a State agency and determinations as to such individual shall not be disclosed or open to public inspection in any manner revealing the individual's identity. This section does not prohibit disclosure of information from the records of a State agency:

(a) To individuals applying for adjustment assistance and other interested parties to an appeal under § 91.52 to the extent necessary to adequately prepare for and participate in a hearing under § 91.52;

(b) To other State agencies in connection with the administration of State laws or this Part 91;

(c) To public assistance agencies for purposes not inconsistent with the purposes of the Act or this Part 91;

(d) To public officials (including law-enforcement officials) for purposes of proceedings under section 244 of the Act, 88 Stat. 2026 (19 U.S.C. 2316), or other purposes found by the Secretary to be not inconsistent with the purposes of the Act and this Part 91; or

(e) To the Secretary and the Manpower Administration of the United States Department of Labor as provided in §§ 91.54 and 91.56.

§ 91.62 Unemployment insurance.

(a) *No denial or reduction.* Unemployment insurance payable to an adversely affected worker shall not be denied or reduced for any week by reason of any right to payment of adjustment assistance under this Part 91.

(b) *No waiting week.* No provision of a State law requiring an individual to serve a week of uncompensated unemployment (waiting week) as a condition to payment of unemployment insurance shall be applied to an adversely affected worker for a week which is a week of unemployment as defined in § 91.3(a)(37) so as to deny the individual a payment of adjustment assistance for such week.

§ 91.63 Agreements with State agencies.

(a) *Authority.* Before performing any function or exercising any jurisdiction under this Part 91 a State or a cooperating State agency shall execute an agreement with the Secretary meeting the requirements of the Act.

(b) *Execution.* An agreement under paragraph (a) of this section shall be signed on behalf of a State by an authorized official of the State and the signature shall be dated. The authority of the official shall be certified by the Attorney General of the State or counsel for the State agency. An agreement will be executed on behalf of the United States by the Secretary.

(c) *Public inspection.* An agreement with a State or cooperating State agency shall be made available by the State agency to any individual or organization wishing to inspect or copy the agreement. As to the United States Department of Labor 29 CFR Part 70 shall apply.

(d) *When effective.* An agreement under this section must be executed prior to July 1, 1975, by a State agency to meet the requirement of section 3302(c)(4)(A) of the Internal Revenue Code of 1954 (26 U.S.C. 3302(c)(4)(A)), as added by section 239(e) of the Act, 88 Stat. 2025 (19 U.S.C. 2311(e)), and when so executed shall be effective as of April 3, 1975.

(e) *Breach.* If the Secretary finds that a State or State agency has not executed an agreement under this section before July 1, 1975, or that a State or State agency has not fulfilled its commitments under such agreement, section 3302(c)(4) of the Internal Revenue Code of 1954, as added by section 239 of the Act, shall apply. A State agency or State shall receive reasonable notice and opportunity for hearing before a finding is made under this paragraph that it has not fulfilled its commitments under its agreement.

§ 91.64 Administration absent State agreement.

In any State in which no agreement under § 91.63 is in force the Secretary shall administer this Part 91 and pay adjustment assistance hereunder through appropriate arrangements made through the Manpower Administration of the United States Department of Labor. Such arrangements shall include provision for a fair hearing for any individual whose application for adjustment assistance is denied. A final determination by the Secretary under this section as to the entitlement to adjustment assistance of an individual shall be subject to review by the courts in the same manner and to the same extent as is provided by section 205(g) of the Social Security Act (42 U.S.C. 405(g)).

§ 91.65 Transitional procedures.

(a) *Law applicable.* Except as provided in paragraph (b) of this section—

(1) An individual covered by a certification issued under the Act shall be entitled to adjustment assistance provided for in the Act, in the amounts and under the conditions prescribed in the Act; and

(2) An individual covered by a certification issued under the Trade Expansion Act of 1962 who has not had an application for trade readjustment allowances denied under section 322 of that Act for any week of unemployment (as defined in section 338(14) of the Trade Expansion Act of 1962, 19 U.S.C. 1978(14)) beginning prior to April 3, 1975, may apply for a trade readjustment allowance under this Part 91 for a week of unemployment (as defined in section 247(14) of the Act) beginning on or after April 3, 1975, as if such certification was issued under the Act.

(b) *Weeks before and after April 3, 1975.* An individual applying for a trade readjustment allowance, regardless of whether the certification covering the individual was issued under the Trade Expansion Act of 1962 or the Act, shall receive, if otherwise eligible:

(1) For a week of unemployment as defined by section 338(14) of the Trade Expansion Act of 1962, beginning before April 3, 1975, a trade readjustment allowance in the amount and under the conditions prescribed by section 323 of the Trade Expansion Act of 1962; and

(2) For a week of unemployment as defined by § 91.3(a)(37), beginning on or after April 3, 1975, a trade readjustment allowance in the amount and under the conditions prescribed by Subpart B of this Part 91.

(c) *Tacking.* Weeks of unemployment described in paragraph (b)(1) of this section for which trade readjustment allowances are payable to an individual shall be deducted from the total weeks of unemployment for which the individual is eligible for trade readjustment allowances under § 91.12.

§ 91.66 Savings clause.

The repeal of sections 321 through 328 of the Trade Expansion Act of 1962 shall not abate or otherwise affect entitlement to adjustment assistance under such Act or any appeal which was pending on April 3, 1975, or prevent any appeal from any determination thereunder which did not become final prior to April 3, 1975, if appeal or petition is filed within the time allowed for appeal or petition.

§ 91.68 Termination date.

The regulations in this Part 91 shall cease to be effective on September 30, 1982.

PART 92—REDWOOD EMPLOYEE PROTECTION PROGRAM

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AUTHORITY: Secs. 202 and 213(c)(2), Pub. L. 95-250, Mar. 27, 1978, unless otherwise noted.

SOURCE: 45 FR 58313, Sept. 2, 1980, unless otherwise noted.

Subpart A—General

§ 92.1 Purpose and scope.

(a) *Implementation.* The regulations contained in this chapter are designed to implement Section 103 (d) through (i) of Title I, and Title II of the Redwood National Park Act of 1968, as amended by Pub. L. 95-250 enacted March 27, 1978.

(b) *Application for benefits.* These regulations pertain to applications by individuals for Redwood Employee Protection Program (REPP) benefits such as: weekly layoff benefits, severance payments, vacation replacement benefits, retraining, job search allowances, and job relocation allowances. Applications for such benefits will be administered by the California Employment Development Department (EDD) with the assistance and cooperation of other State employment security agencies (SESAs). Applications by individuals for continuing entitlement to health and welfare benefits and accrual of pension rights and credits will be administered by the Labor-Management Services Administration (LMSA) of the United States Department of Labor.

SPECIAL CONSIDERATIONS

(c) *Conclusive presumption.* The total or partial layoff of a covered employee employed by an affected employer during the period beginning May 31, 1977 and ending September 30, 1980, is conclusively presumed to be attributable to the expansion of the Redwood National Park (Section 203, Pub. L. 95-250, 92 Stat. 175). No such presumption exists, however, if such employee has voluntarily quit, been laid off or terminated for a cause that would disqualify him/her for unemployment compensation with certain limited exceptions. The exceptions are listed in § 92.21(b)(7) (i) through (viii) herein.

(d) *Interpretation of Title II.* In implementing and interpreting Title II of the Act, the Secretary shall avoid inequities adverse to employees. In all cases where two or more interpretations of Title II of the Act would be reasonable, the Secretary shall adopt and apply that interpretation which is most favorable to employees (Section 213(f), Pub. L. 95-250, 92 Stat. 182).

§ 92.2 Terms relating to administration.

"Act" means the Redwood National Park Act of 1968 as amended by Pub. L. 95-250.

"Administrative Record" means all evidence, documents, and information, including transcript, relative to an appeal of a claimant.

"ALJ" means an Administrative Law Judge of the California Unemployment Insurance Appeals Board and includes any other designee who is employed to act as the first level appellate authority for the C.U.I.A.B.

"Applicant" means an individual who has made an application for REPP benefits under the Act.

"Assistant Secretary" means the Assistant Secretary of Labor for Labor-Management Relations, unless otherwise indicated.

"Benefits" means weekly layoff benefits, severance payments, vacation replacement payments for seasonal employees, retraining, job search allowances, job relocation allowances, and continuing entitlement to health and welfare benefits and accrual of pension rights and credits.

"Code" means the California Unemployment Insurance Code or its equivalent in another state.

"CUIAB" means the California Unemployment Insurance Appeals Board.

"Days" means calendar days.

"EDD" means the California Employment Development Department.

"ETA" means the Employment and Training Administration of the U.S. Department of Labor.

"LMSA" means the Labor-Management Services Administration of the U.S. Department of Labor.

"Office of Appeals" means the San Francisco Office of the California Unemployment Insurance Appeals Board or its equivalent in another state.

"Pension" means any payment(s) or annuity received by an employee from his/her employer upon retirement.

"REPP" means the Redwood Employee Protection Program.

"SESA" means a State employment security agency.

"Secretary" means the Secretary of Labor.

"Severance payment" means a lump sum payment in lieu of other benefits to an affected employee or a retired employee (Section 208, Pub. L. 95-250, 92 Stat. 179).

"Vacation replacement benefit" means a payment to a seasonal employee which is equivalent to the payment the seasonal employee would have received for vacation pay had the individual remained employed in his/her seasonal occupation (Section 207(c)(3), Pub. L. 95-250, 92 Stat. 178).

"Weekly layoff benefit" means a weekly payment to an affected employee (other than a short-service employee) which is an amount equivalent to the level of weekly earnings he/she would be receiving if still working for his/her last affected employer (Section 207(a), Pub. L. 95-250, 92 Stat. 178).

§ 92.3 Terms relating to employees.

(a) *Employee.* "Employee" means any person employed by an affected employer with the exception of those persons who are engaged in managerial functions or functions directly auxiliary to management as described in Section 13(a)(1) of the Fair Labor Standards Act (Section 201(3), Pub. L. 95-250, 92 Stat. 172).

(b) *Covered employee* means an employee who:

(1) Had seniority under a collective bargaining agreement with an affected employer as of May 31, 1977, has at least twelve months of creditable service as of March 27, 1978, and has performed work (as defined in Section 201(17) of the Act) for one or more affected employers on or after January 1, 1977, or

(2) Has performed work for one or more affected employers for at least 1,000 hours from January 1, 1977 through March 27, 1978 and had a continuing employment relationship with an affected employer as of March 27, 1978, or if laid off on or after May 31, 1977 but before March 27, 1978 had such a relationship as of the date of layoff (Section 201(10), Pub. L. 95-250, 92 Stat. 173).

(c) *Affected employee* means a covered employee who: (1) Has been either totally or partially laid off by an affected employer within a time period beginning on or after May 31, 1977 and ending September 30, 1980, unless extended by the Secretary; or (2) has been determined by the Secretary as an individual adversely affected by the expansion of the Redwood National Park (Section 201(11), Pub. L. 95-250, 92 Stat. 173).

SPECIAL CLASSES OF EMPLOYEES

§ 92.4 Short-service employee.

(a) *Definition.* "Short-service employee" means an affected employee who:

(1) Will not reach age sixty before October 1, 1984; and

(2) As of the date of becoming an affected employee, has less than five full years of service credit under a pension plan contributed to by industry employers or has less than five full years of creditable service (Section 209, Pub. L. 95-250, 92 Stat. 180).

(b) *Weekly layoff and vacation replacement benefit.* A short-service employee shall not be eligible to receive weekly layoff or vacation replacement benefits.

(c) *Severance payment.* A short-service employee shall be eligible to receive a severance payment provided he/she meets the eligiblity requirements set forth in § 92.24 (b) or (c).

(d) *Retraining, job search and relocation allowances.* A short-service employee shall be eligible for retraining, job search allowances, and job relocation allowance, beginning on the date of his/her total layoff or on the date of the availability of approved retraining (whichever is later) and extending through a period equal to the length of his/her creditable service. However, in the case of retraining, the period of eligibility shall not commence until such approved retraining is available. In no instance shall payment of REPP funds be made to any individual engaged in approved retraining for any period of time after September 30, 1984. While in good faith engaged in training a short-service employee shall be paid the same stipends and allowances as are applicable to other individuals engaged in such training programs who are not covered by this Act.

(e) *Health and welfare and pension benefits.* A short-service employee shall not have continuing entitlement to health and welfare benefits or accrual of pension rights and credits.

§ 92.5 Seasonal employee.

(a) *Definition.* "Seasonal employee" means an affected employee (including a short-service employee) whose highest paid job held, other than by temporary assignment, with one or more affected employers during the period from January 1, 1977 through March 27, 1978, was in an occupation in which the average annual number of weeks during which work was actually performed by the employee in such occupation during the five calendar years preceding March 27, 1978 was forty or less weeks (Section 207(c), Pub. L. 95-250, 92 Stat. 178).

A seasonal employee (other than a short-service employee) shall be eligible to receive weekly layoff and vacation replacement benefits during his/her usual season. A seasonal employee may elect to receive a severance payment in lieu of weekly layoff and vacation replacement benefits. In addition, he/she shall be eligible for retraining, job search allowances, and a job relocation allowance, during his/her period of protection, and for continuing entitlement to health and welfare benefits and to accrual of pension rights and credits.

§ 92.6 Retired employee.

(a) *Definition.* "Retired employee" means an employee who retired from employment with an affected employer, for reasons other than disability, on or after May 31, 1977 but not later than September 30, 1984 (Section 204(b)(1), Pub. L. 95-250, 92 Stat. 176). In order to be eligible for REPP benefits such employee must:

(1) Be receiving or have received pension benefits under a plan financed by industry employers; and

(2) Be at least 62 but less than 65 at the time of retirement; and

(3) Not be eligible for benefits under Title XVIII of the Social Security Act (Medicare).

(b) *Weekly layoff and vacation replacement benefits.* A retired employee shall not be eligible to receive a weekly layoff or vacation benefit.

(c) *Severance payment.* An employee retiring early (between age 62 and age 65) who meets the other criteria set forth in § 92.6(a) shall be eligible to receive a severance payment upon presentation of evidence that he/she is retired on a plan financed by an industry employer (Section 204(b) (1), (2), (3), Pub. L. 95-250, 92 Stat. 176).

(d) *Retraining, job search and relocation allowances.* A retired employee shall not be eligible for retraining, job search allowances, and a job relocation allowance.

(e) *Health and welfare benefits.* A retired employee shall have continuing entitlement to health and welfare benefits (other than group life insurance and additional death, dismemberment and loss of sight benefits) if the employee lost entitlement to such benefits upon retirement.

§ 92.7 Contract employee.

(a) *Definition.* "Contract employee" means an employee:

(1) Who performed work pursuant to a contract or agreement for services within or directly related to the expansion area between an affected con-

tract employer and an affected woods employer and,

(2) Said employee performed such work within or directly related to the expansion area (Section 201(4), Pub. L. 95-250, 92 stat. 172)

(b) *Limited number.* The number of contract employees who may be eligible for REPP benefits is limited. The determination by LMSA as to how many contract employees may become eligible for REPP benefits is calculated as follows: First determine what percent of the affected contract employer's employee hours were worked within or directly related to the expansion area in 1977. Then apply (multiply) that percent times the total of all employees on the contract employer's 1977 payroll. The product of this calculation becomes the number of that contract employer's employees who may receive REPP benefits. For example, 40% of an employer's employee hours in 1977 were worked in expansion area. The employer had 175 total contract employees on the company's payroll in 1977. 175 multiplied by .40 equals 70; 70 employees would thereby be eligible for benefits. In order to assure benefits will be allocated to employees based upon priority of submission of claim, the date and time of application shall be recorded when such employees make application.

Each employee who receives any type of benefits counts as one employee when calculating the number of eligible employees for that contract employer.

§ 92.8 Terms relating to employers.

(a) *Industry employer.* "Industry employer" means a corporation, partnership, joint venture, person, or other form of business entity (including a predecessor or successor by purchase, merger, or other form of acquisition), of which a working portion or division is an affected employer (Section 201(5), Pub. L. 95-250, 92 Stat. 172).

(b) *Affected employer.* "Affected employer" means a corporation, partnership, joint venture, person, or other form of business entity (including a predecessor or a successor by purchase, merger, or other form of acquisition), or a working portion or division thereof, which is engaged in the harvest of timber or in related sawmill, plywood, or other wood processing operations, and which meets the qualifications set forth in the definition of affected woods employer, affected mill employer, or affected contract employer. For purposes of this Act, the Assistant Secretary shall determine an employer's status and shall provide a list of employers who qualify as affected employers (Section 201(6), Pub. L. 95-250, 92 Stat. 172).

(c) *Affected woods employer.* "Affected woods employer" means an affected employer engaged in the harvest of redwood timber who owns at least 3 per centum of the number of acres authorized to be included within the expansion area on January 1, 1977 and on March 27, 1978; provided, that an affected woods employer shall be only that major portion or division of the industry employer directly responsible for such harvesting operations (Section 201(7), Pub. L. 95-250, 92 Stat. 172).

(d) *Affected mill employer.* "Affected mill employer" means an affected employer engaged in sawmill, plywood, or other wood processing operations in Humboldt or Del Norte Counties in the State of California who has either (1) obtained 15 per centum or more of its raw wood materials directly from affected woods employers during calendar year 1977, or (2) is a wholly owned mill of an affected woods employer; provided, that an affected mill employer shall be only that major portion or division of the industry employer directly responsible for such wood processing operations (Section 201(8), Pub. L. 95-250, 92 Stat. 173).

(e) *Affected contract employer.* "Affected contract employer" means an affected employer providing services pursuant to contract with an affected woods employer, if at least 15 per centum of said employer's employee-hours worked during calendar year 1977 were within or directly related to the expansion area pursuant to such contract or contracts (Section 201(9), Pub. L. 95-250, 92 Stat. 173).

(f) *Performed work.* "Performed work" shall include any time during which an employee worked for an affected employer or with respect to which an employee received pay from such an employer for time not worked, and shall also include any time during which an employee would have been at work for such an employer if not for service in the armed forces, for a leave (approved by the employer) for work with an employee organization, or for a disability for which said employee received workers' compensation, disability compensation benefits provided under California law, or social security disability pension benefits: *Provided,* That contract employees shall be deemed to have performed work during the period of such service or disability only if:

(i) The employee worked within or directly related to the expansion area immediately prior to the occurrence of such service or disability and

(ii) The employee returned or sought to return to work for an affected contract employer immediately after the end of the service or disability if that was prior to the date of enactment.

The term "work performed", when used in relation to a period of time, shall also be deemed to include any period during which an employee is deemed to have performed work (Section 201(17), Pub. L. 95-250, 92 Stat. 174).

§ 92.9 Terms relating to employment.

(a) *Commuting area.* "Commuting area" means an area, for purposes of suitable work, within the commuting distance of an individual's place of residence. It is determined in accordance with policy established under California State law. However, for the purposes of a job relocation allowance, commuting area shall mean a work location which is within 30 or less normal highway miles of an affected employee's place of residence.

(b) *Continuing employment relationship.* "Continuing employment relationship" means that an employee has worked for an affected employer on a regular basis. Authorized absences are not considered a break in a continuing employment relationship. Summer or vacation relief employees or other temporary employee replacements are not considered to have a continuing employment relationship.

(c) *Continuous service.* "Continuous service" with respect to employees not having seniority under a collective-bargaining agreement with an affected employer or an industry employer shall mean a period of time measured in months equal to the sum of all hours during which the employee performed work for said employer plus all hours for which the employee received pay for time not worked divided by one hundred and seventy-three (Section 201(16), Pub. L. 95-250, 92 Stat. 174).

For example, an employee worked 1,367 hours in 1976, 1,824 hours in 1977, and 2,172 hours in 1978. The employee is then laid off. Add: 1,367+1,824+2,172 for a sum of 5,363; divide this sum (5,363) by 173; the result is then 31 months of continuous service.

(d) *Creditable service.* "Creditable service" means an affected employee's total length of service working for affected or industry employers. Creditable service when used to determine an employee's period of protection shall be computed as follows:

(1) A period equal to the length of an employee's seniority (or continuous service), with the employee's last affected employer at the time said employee is eligible to receive a weekly layoff benefit or vacation replacement benefit; plus

(2) A period equal to the sum of all prior periods during which the employee had seniority (or continuous service) with the same affected employer and with other industry employers. However, if such seniority (or continuous service) was broken for more than three consecutive years, any periods of seniority (or continuous service) prior to the break shall be disregarded and shall not be counted as creditable service. Creditable service shall not be considered as broken if the cause for the break in service was one of the following:

(i) Employment with other affected employers or industry employers; or

(ii) Service in the Armed Forces; or

(iii) Disabilities for which the employee received any workers' compensation benefits; unemployment compensation disability benefits; or disability benefits under the Social Security Act.

Creditable service shall include only those periods of employment with his/her last affected employer and other industry employers (Section 206, Pub. L. 95-250, 92 Stat. 177). If necessary EDD will request the appropriate authorization to examine an applicant's social security wage record in order to establish an applicant's creditable service.

(e) *In the industry.* "In the industry" means employment with affected employers or, in general, with any employer which is primarily engaged in activities defined in a Standard Industrial Classification (SIC) number is in the four digit Group No. 2411 (Logging Camps and Logging Contractors), 2421 (Sawmills and Planning Mills, General), 2435 and 2436 (Hardwood and Softwood, Veneer and Plywood), 2492 (Particle Board) or 2611 (Pulp Mills), or with an employer engaged in related types of activities that are "sawmill", "plywood", or other "wood processing operations" within the meaning of Title II.

(f) *Partial layoff.* "Partial layoff" or downgrading means a calendar week for which all pay received by a covered employee from affected employers is at least 10 per centum less than the weekly layoff benefit or vacation replacement benefit that would have been payable for that week had the employee suffered a total layoff (Section 201(12), Pub. L. 95-250, 92 Stat. 173).

(g) *Period of protection.* "Period of protection" means a period of time equal to the length of an affected employee's creditable service during which period an affected employee is entitled to weekly layoff benefits or vacation replacement benefits and to continuation of health and welfare benefits and accrual of pension rights and credits. An employee's period of protection shall start with the beginning of the first week for which the employee is eligible to receive a weekly layoff benefit or vacation replacement benefit and shall continue until the earliest of:

(1) The date the employee accepts a severance payment;

(2) A period equal to the length of the employee's creditable service is exhausted; or

(3) The employee's sixty-fifth birthday.

In no event shall an employee's period of protection extend beyond September 30, 1984, except for an employee who reaches age 60 on or before September 30, 1984, in which case the employee's period of protection shall be extended until his/her 65th birthday (Section 206(a), Pub. L. 95-250, 92 Stat. 177).

(h) *Seniority.* "Seniority" with respect to an employee covered by a collective-bargaining agreement with an affected employer, shall be determined as provided in such agreement and shall be deemed to refer to company seniority, if the agreement provides for such seniority and, otherwise, to plant seniority (Section 201(15), Pub. L. 95-250, 92 Stat. 174).

(i) *Sixty-fifth birthday.* "Sixty-fifth birthday" means the last day of the month in which the sixty-fifth birthday occurs (Section 202, Pub. L. 95-250, 92 Stat. 175).

(j) *State job service.* "State job service" means that agency of the state government which performs the employment service functions.

(k) *Suitable work.* "Suitable work" means:

(1) Work defined as suitable in the California Unemployment Insurance Code; and

(2) With respect to an employee who has completed retraining paid for by the Secretary, a job paying no less than the prevailing wage rate in the area for the occupation for which said employee was retrained; or

(3) A job comparable with that which said employee would be required to accept pursuant to the seniority provisions of the applicable collective-bargaining agreement (or, if not covered by such an agreement, in accordance with the usual practice of the affected employer) (Section 201(14), Pub. L. 95-250, 92 Stat. 173).

(l) *Total layoff.* "Total layoff" means a calendar week during which an affected employer has made no work available to a covered employee and has made no payment to a covered employee for the time not worked (Section 201(12), Pub. L. 95-250, 92 Stat. 173).

(m) *Usual season.* "Usual season" means those weeks commencing in each calendar year during which a seasonal employee is usually employed by an affected employer.

In the event of ambiguity of definition or meaning the express terms of the statute shall prevail.

Subpart B—Application for Benefits

§ 92.10 Who may apply.

(a) *Application.* An application for REPP benefits may be filed by a covered employee or a retired employee.

§ 92.11 When to apply.

(a) *Filing after layoff.* An initial application for REPP benefits by a covered employee may be filed with respect to a total or partial layoff by an affected employer which occurred on or after May 31, 1977 but not later than September 30, 1980, or as provided in § 92.15 of this part.

(b) *Filing after retirement.* An initial application for REPP benefits by a retired employee may be filed with respect to the employee's retirement from employment with an affected employer on or after May 31, 1977, but not later than September 30, 1984.

[45 FR 58313, Sept. 2, 1980, as amended at 46 FR 32217, June 19, 1981]

§ 92.12 How to apply.

(a) *Application for unemployment compensation.* An application for unemployment compensation filed by a covered employee with the Employment Development Department or State Employment Security Agency (SESA) on or after April 3, 1978 shall be deemed an application for REPP benefits (Section 205(a), Pub. L. 95-250, 92 Stat. 176).

(b) *Eureka, Crescent City, and Redding field offices.* An initial application for REPP benefits may be filed directly in either the Eureka, Crescent City, or Redding, California field offices of the EDD.

(c) *Other EDD field offices.* An initial application for REPP benefits may also be filed at any other field office of the EDD.

(d) *SESA.* Persons residing outside of California may file an initial application for REPP benefits at their nearest local office of the SESA under special interstate procedures.

§ 92.13 Certified lists of employers.

(a) *Names of employers.* The Assistant Secretary shall publish and make available to the ETA regional offices, the EDD Central Office and SESA offices certified lists containing the names of:

(1) Industry employers;

(2) Affected employers;

(3) Affected contract employers (including the maximum number of contract employees who can become eligible for REPP benefits); and

(4) Those local employers who have been determined not to qualify as affected employers.

(b) *Updating.* These lists were established originally based upon early survey information. Since all of the eligible affected employers may not have been identified, these lists are subject to challenge at any time to review the addition or deletion of any given employer.

§ 92.14 Processing applications.

EDD determinations. The EDD shall process all applications to determine whether an applicant is entitled to REPP benefits and the types and amounts of such benefits pursuant to policies, criteria, and standards set forth in these regulations.

§ 92.15 Layoffs after September 30, 1980.

(a) *Qualifying layoffs.* A covered employee laid off between October 1, 1980 and September 30, 1984 shall be deemed to be an affected employee if such layoff occurred under one of the following circumstances:

(1) The covered employee suffered a qualifying layoff from an affected employer and the employee returned to work for a known short-term recall from that employer or the length of employment is less than 50% of a seasonal worker's average season (as computed for REPP benefits) and the employee is again laid off; or

(2) The covered employee works for an affected employer on a staggered work schedule, designed to spread available work among employees to prevent total layoffs, during the period beginning May 31, 1977 and ending September 30, 1980 and has continued to work on such schedule beyond September 30, 1980. (An example of a staggered work schedule which is qualifying for this purpose is a week of work and a week of layoff or any reasonable extension of the principle. An example of a staggered work schedule which is not qualifying for this purpose is the 28 day work cycle as the employees average 40 hours per week.); or

(3) The covered employee was laid off by an affected employer under circumstances related to the Park expansion.

(b) *Nonqualifying layoffs.* After the effective date of this section any covered employee laid off between October 1, 1980 and September 30, 1984 shall not be deemed an affected employee if such layoff occurred under one of the following circumstances:

(1) A strike, lockout, maintenance shutdown, vacation shutdown, flood, earthquake, fire, or temporary adverse weather condition; or

(2) Any other reason unrelated to the Park expansion.

(c) *Eligibility review after the effective date of this section.* Any covered employee who has remained on a layoff that occurred between May 31, 1977 and September 30, 1980, will continue to be qualified for REPP benefits as a result of that layoff.

Notwithstanding § 92.50 of this part, after the effective date of this section, an affected employee recieving REPP benefits based on a layoff occurring after September 30, 1980 shall have the circumstances of that layoff redetermined on the basis of the above criteria. Only those employees whose layoffs are found to be qualifying upon redetermination, shall continue to receive REPP benefits.

[46 FR 32217, June 19, 1981]

Subpart C—Types of Benefits

§ 92.20 General.

This section discusses the types of benefits available under REPP. The amount of such benefits is discussed in Subpart D.

§ 92.21 Weekly layoff benefits.

(a) *EDD determination of entitlement.* The EDD shall determine the applicant's entitlement to weekly layoff benefits based upon the applicant's statement and other pertinent records.

(b) *Applicant eligibility.* To be eligible with respect to any week an applicant must:

(1) Have been determined to be an affected employee other than a short-service employee;

(2) Not be a retired employee;

(3) Not be receiving a Social Security retirement or disability benefit or a pension under a plan contributed to by an affected employer;

(4) Be registered with the State Job Service of the EDD or other SESA (unless the applicant is fully employed);

(5) Not have accepted a severance payment;

(6) Not have exhausted his/her period of protection; and

(7) Be eligible for unemployment compensation benefits under the California Unemployment Insurance Code; provided, however, he/she shall be eligible for weekly layoff benefits if the sole reason for ineligibility under the code is one or more of the following:

(i) Insufficient base period earnings; or

(ii) Exhaustion of benefit rights; or

(iii) Earnings in excess of the amount which would entitle the employee to a partial benefit for the week; or

(iv) The waiting week requirement; or

(v) Unavailability for work because of jury duty, National Guard duty, authorized retraining, or because of similar reason as determined by the Secretary pursuant to Section 201(14) of the Act; or

(vi) Refusal of work which is not "suitable work"; or

(vii) Receipt of workers' compensation or other benefit for partial disability which the employee would be entitled to receive while working; or

(viii) Any other cause of ineligibility with respect to which the Secretary determines that, under the circumstances, it would be unreasonable or otherwise contrary to the purpose of this Act to deny said employee a benefit provided for in the Act.

§ 92.22 Vacation replacement benefits.

(a) *EDD determination of entitlement.* The EDD shall determine the applicant's entitlement to vacation replacement benefits based upon the applicant's statement and other pertinent records.

(b) *Applicant eligibility.* Only seasonal employees will be eligible for a vacation replacement benefit. To be eligible the employee must meet the same eligibility criteria required for weekly layoff benefits.

§ 92.23 Health and welfare benefits; pension rights and credits.

(a) *Continuing entitlement.* Affected employees, other than short-service employees, have continuing entitlement to health and welfare benefits and accrual of pension rights and credits. The Assistant Secretary shall seek to enter into agreements with affected employees, affected employers, plan trustees, labor organizations, and/or others to maintain these benefits and rights.

(b) *Methods of continuation.* Continuation of coverage may be provided by:

(1) An employee's existing plan with his/her last affected employer; or

(2) An arrangement between the Assistant Secretary and others to provide equivalent coverage to the maximum extent feasible.

(c) *Selection of method.* The Assistant Secretary shall have the sole authority to select the appropriate method for benefit plan continuation.

(d) *Exemption from ERISA liability.* No person shall be subject to liability under the Employee Retirement Income Security Act of 1974, Section 302 of the Labor-Management Relations Act of 1947, or any other law, solely by reason of the receipt of payments from the Secretary or the payment of benefits to affected employees in accordance with this Section. Receipt of such payments and the payment of such benefits are deemed to be consistent with any relevant plan documents. None of these actions shall place the Secretary in the position of an employer or a party in interest (including a fiduciary) for purposes of the Employees' Retirement Income Security Act of 1974 (Section 204(d), Pub. L. 95-250, 92 Stat. 176).

(e) *Level of coverage.* If the last affected employer's health and welfare or pension benefit levels change during an employee's period of protection, the employee's benefits shall be changed so as to provide a level of benefit comparable to that which he/she would otherwise have received except for his/her current status as an affected employee.

(f) *Responsibility of affected and retired employees.* Affected and retired employees must retain medical records in order to substantiate claims for reimbursement.

(g) *Retired employee's entitlement.* A retired employee's continuing entitlement is contained in § 92.6(e).

§ 92.24 Severance payment.

(a) *EDD determination of entitlement.* The EDD shall determine the applicant's entitlement to a severance payment based upon the applicant's statement and other pertinent records.

(b) *Applicant eligibility.* To be eligible an applicant must meet the basic eligibility requirements of an affected employee or retired employee and must:

(1)(i) Have been on continuous layoff from employment with the employee's last affected employer for a period of at least 20 weeks subsequent to December 31, 1977; provided, that for a short-service seasonal employee the period of continuous layoff will not be considered broken by the employee's off season although off season weeks will not count toward the 20 weeks of layoff; and

(ii) Have no definite recall date for work with the affected employer by whom the employee was laid off and no offer of suitable work by any affected employer; and

(iii) Apply for severance payment during a week with respect to which the employee has not performed work for an affected employer; *or*

(2) If not (b)(1) (i) (ii) and (iii) of this section, then, have been permanently separated from employment with an affected employer during the period beginning May 31, 1977 and ending March 27, 1978, as a result of the closure of the mill or plant in which said employee was employed and, since said separation, have not been employed by an affected employer (Section 208(a) (1) (2) (3) (4), Pub. L. 95-250, 92 Stat. 179).

(c) *Disabled employee's eligibility.* An employee shall not be denied a severance payment for failure to comply with the requirements of paragraph (b)(1)(iii) of this section if the employee is otherwise eligible but is totally and permanently disabled as defined in the Social Security Act (Section 208(a)(3), Pub. L. 95-250, 92 Stat. 179).

(d) *Repayment agreement requirement.* An affected employee (other than a short-service employee) or a retired employee must, as a condition of receiving a severance payment, sign a repayment agreement pledging to return a severance payment if said affected employee or retired employee resumes employment with an affected employer or resumes employment in the industry within Humboldt, Del Norte, Trinity, Mendicino, or Siskiyou Counties in California prior to October 1, 1980, or such later date as established by the Secretary (Section 208(e), Pub. L. 95-250, 92 Stat. 180).

(e) *Repayment agreement liability.* An affected employee or a retired employee who signs a repayment agreement shall be liable for repayment of a severance payment if the individual returns to work in the industry prior to September 30, 1980 (or such later date as the Secretary determines but in no case later than September 30, 1984). All earnings received by an individual who has returned to the industry prior to September 30, 1980 (or as extended) shall be subject to a repayment deduction.

(f) *Arrangements for repayment.* The repayment agreement shall include the employee's agreement to arrange with his/her employer for the withholding of the applicable amounts from the employee's pay and/or shall further include authorization for the Secretary to make such arrangements with the employer.

(g) *Repayment amounts.* Repayment amounts shall be in weekly installments equal to a specified percentage of the employee's earnings in the industry which shall not exceed the amounts specified in the Consumer Credit Protection Act, as amended. Repayment shall continue until the full amount of overpayment is recovered.

§ 92.25 Retraining (Section 210, Public Law 95-250, 92 Stat. 181).

(a) *EDD approval.* The EDD shall approve technical and professional and other types of training for an affected employee (including a short-service employee) until September 30, 1984, provided:

(1) There is no suitable work available within a reasonable commuting area; and

(2) There is substantial reason to believe that successful completion of training will enhance the affected employee's employment prospects; and

(3) The affected employee makes application and can complete the training during the employee's period of protection. However, a short-service employee must make application during the period which begins on the date of his/her total layoff or on the date of the availability of approved retraining (whichever is later) and extends for that period of time which is equal to the length of his/her creditable service. In no instance shall authorized training for any employee extend beyond September 30, 1984.

(b) *Training criteria.* The EDD shall determine the applicant's ability to successfully complete such training, the appropriateness of the length of training, the hours of attendance, and whether the training facility and the trainee are engaged in training in good faith. Training costs as well as the weekly layoff benefits or vacation replacement benefits which the trainee would otherwise be eligible to receive, will be paid for the duration of approved training as long as the training facility determines good faith is being observed. If good faith is not observed, the EDD shall take appropriate corrective action. The criteria for determining good faith are adherence to scheduled hours of attendance and satisfactory progress as normally measured for the type of training being received. The criteria to be used in determining suitable length and hours of training are:

(1) The training is of suitable duration to achieve the desired skill or knowledge level; and

(2) The scheduled hours of attendance are in accordance with the prevailing practices of other like training available in the commuting area.

(c) *No cost training and purchased training.* In determining whether training to be secured for an affected employee shall be no cost training or purchased training, the EDD shall consider, as the primary objective, increasing the affected employee's employability so as to enhance the opportunities for the affected employee to return to full employment.

(1) The EDD shall, as far as possible, refer an affected employee to retraining which is provided at no cost. This training may be provided under the Comprehensive Employment and Training Act of 1973, as amended, as offered by a prime sponsor or under any other Federal or State law.

(2) The EDD may purchase training to assist the affected employee's return to full employment. This training may be institutional training or on-the-job training. If institutional, vocational, or professional training is purchased, the training institution must be approved as meeting applicable standards by the appropriate State educational agency, or by a recognized accreditation association.

§ 92.26 Job search allowance (Section 211, Public Law 95-250, 92 Stat. 181).

(a) *EDD approval.* The EDD shall approve a job search allowance for an eligible affected employee (including a short-service employee) to assist the employee to obtain a job within the United States. To be eligible, an affected employee must:

(1) Be totally laid off from employment with an affected employer;

(2) File an application for a job search allowance within the later of: (i) The employee's period of protection, or (for a short-service employee, an application must be filed during the period which begins on the date of his/her total layoff and extends for that period of time which is equal to the length of his/her creditable service) (ii) within six months of the successful completion of approved retraining.

(3) Be registered with the State Job Service in the area in which the affected employee is residing;

(4) Have no reasonable expectation of obtaining suitable work in the commuting area;

(5) Have received a bona fide referral to suitable work or have been referred by a State Job Service to suitable work outside the commuting area or have a reasonable expectation of obtaining suitable work of a long term duration in the area where the job search will be conducted; and

(6) Complete the job search within a reasonable period not exceeding 30 calendar days, after the day on which the job search began.

(b) *Job search completion.* A job search shall be deemed complete when the individual has either secured employment or has contacted each employer to whom referred by the State Job Service in connection with a job search.

(c) *Verification of employer contacts.* The Job Service in the State in which the affected employee resides shall verify employer contacts certified by the affected employee.

(d) *Entitlement to reimbursement.* An affected employee who has incurred expenses as a result of any job search undertaken from the period beginning May 31, 1977 and ending October 2, 1980 shall be entitled to reimbursement of authorized expenses, provided the employee furnishes adequate evidence to support his/her claims for expenses and provided further, that the employee furnishes adequate evidence to the EDD that the job search was undertaken as required by paragraphs (a)(4) and (a)(5) of this section and has completed the job search as required by paragraph (a)(6) of this section.

§ 92.27 Job relocation allowance (Section 212, Public Law 95-250, 92 Stat. 181).

(a) *EDD approval.* The EDD shall approve a job relocation allowance for an eligible affected employee (including a short-service employee) who obtains employment outside the commuting area, to meet the reasonable and necessary travel expenses incurred in obtaining a residence and in transporting self, family, household, and personal effects to the new residence in the area of relocation. A job relocation allowance shall not be paid for more than one relocation nor shall it be paid to more than one member of a family in the same household for the same relocation.

A job relocation allowance shall be paid to an eligible affected employee only for said employee's first relocation from the impacted area.

(b) *Relocation on or prior to October 2, 1980.* For an affected employee (including a short-service employee) who relocated on or before June 30, 1979 to be eligible, the employee must:

(1) File an application for a job relocation allowance during the employee's period of protection; provided, that a short-service employee must file an application during the period which begins on the date of his/her total layoff (whichever is later), and extends to the end of that period of time which is equal to the length of his/her creditable service;

(2) Have relocated during the period beginning May 31, 1977 and ending October 2, 1980, to accept employment requiring a change in residence to a location outside the commuting area in which the employee resided immediately prior to becoming an affected employee.

(c) *Relocation after October 2, 1980.* For an affected employee (including a short-service employee) who relocated after October 2, 1980 to be eligible, the employee must:

(1) File an application as described in paragraph (b)(1) above;

(2) Be registered with the State Job Service in the area in which the affected employee is residing;

(3) Have no reasonable expectation of obtaining suitable work in the commuting area;

(4) Have obtained suitable work affording reasonable expectation of long-term duration, or a bona fide offer of such work, in the area in which the affected employee wishes to relocate.

(d) *Reimbursable expenses.* An affected employee shall be eligible to reimbursement for:

(1) Expenses incurred in moving household and personal effects;

(2) Traveling and living expenses in moving self and any family members from the same household, not to exceed 10 working days;

(3) Traveling and living expenses for self and spouse not to exceed 10 days which need not be consecutive days to obtain a residence;

(4) Any loss or cost incurred by the affected employee in the sale of a home for less than the fair market value or any loss or cost in securing the cancellation of an unexpired lease on a dwelling occupied by the affected employee as a home.

Subpart D—Amount and Calculations of Benefits

§ 92.30 Weekly layoff benefit, vacation replacement benefit, and/or severance payment.

The EDD shall determine the amount of an affected employee's weekly layoff benefit, vacation replacement benefit, and/or severance payment in accordance with the methods for calculation set forth in Sections 207, 208, and 209 of the Act and in the procedures and guidelines issued by the Assistant Secretaries for Labor-Management Relations and Employment and Training.

§ 92.31 Job search allowance (19 U.S.C. 2297).

(a) *Travel by commercial carrier.* For travel by commercial carrier, an affected employee shall receive 80% of the cost of transportation by the most economical and practical public transportation from the employee's regular place of residence to the area in which the job search will be conducted and return.

(b) *Travel by privately owned car.* For travel by privately owned automobile, an affected employee shall receive a travel allowance of 9.6 cents per mile, for the mileage of the usually traveled route from and to the affected employee's regular place of residence to the area in which the job search will be conducted, and for the mileage covered during the actual job search activities within the designated area.

(c) *Lodging costs.* In connection with an authorized job search, an affected employee shall receive 80% of the costs of lodging, not exceeding $12.00 per night, and 80% of the costs of meals, not exceeding $5.00 per day. Lodging costs must be verified by receipt.

(d) *Maximum amount.* The maximum amount of job search allowance payable to an affected employee shall not exceed $500.

(e) *Advance payment.* The EDD shall advance upon request by an affected employee within 5 days prior to commencement of a job search, 60% of the estimated job search allowance, but not exceeding $300. Such advance shall be deducted from any payments made under this part.

(f) *Overpayment.* If it is found that an affected employee failed without good cause to complete a job search, any job search allowance paid or advanced to the affected employee under this section shall constitute an overpayment. Any overpayment shall be recovered from the affected employee by repayment in cash or by deduction from benefits due the affected employee under the Act as provided in § 92.34.

§ 92.32 Job relocation allowance (Public Law 93-236).

(a) *Travel allowance.* Travel expenses, for a period not to exceed 10 days (which need not be consecutive days), for an affected employee and spouse but not dependent children or other family members shall be reimbursed for a round trip to obtain a residence at the new work location. Travel expenses for an affected employee, spouse, and dependent children shall be reimbursed for a one-way trip in connection with moving.

(1) Reimbursement shall be made for travel by commercial carrier, provided that the most economical public transportation means available is used in view of the circumstances.

(2) Reimbursement shall be made for travel by each privately owned automobile at the rate of 15 cents per mile for the usually traveled route, for necessary bridge and highway tolls, and for parking fees.

(3) If for good cause a member or members of an affected employee's family must travel separately, the affected employee shall be reimbursed for the travel of such family member(s) in accordance with paragraphs (a) (1) and (2) of this section and lodging and living expenses in accordance with paragraphs (b) (1) and (2) of this section.

(b) *Lodging and living expenses.* An affected employee and family members shall be reimbursed for lodging and living expenses incurred while in transit from the old residence to the new residence, including the day of departure and the day of arrival, not to exceed 10 days, except that if the new residence is not ready for occupancy upon arrival, additional living expenses may be reimbursed up to 10 days. Living expenses for an affected employee and spouse shall be reimbursed, for a period not to exceed 10 days which need not be consecutive days.

(1) Lodging shall be reimbursed at actual cost. Rooms must be occupied when feasible so that double room rates will apply. Moderately priced hotels and motels shall be used.

(2) Meals and related gratuities shall be reimbursed at actual cost to a maximum of $16.00 per person per day for the affected employee, spouse, and children. Gratuities for meals must be included in the cost of the meals.

(c) *Moving allowance.* The cost of transporting household effects and other personal effects of the affected employee and family members shall be reimbursed when transported by licensed commercial carrier and/or by use of rental truck or trailer.

(1) Reimbursement shall be made for packing, insuring, shipping, and

unpacking of standard household items and personal effects. Insurance shall be provided for a valuation of $1.50 per pound; additional insurance for exceptionally valuable items may be obtained by the employee; however, the cost of such additional insurance shall not be reimbursed. Reasonable expenses for storage of household effects and personal property at the new location shall be paid when necessary because the residence at the new location is not ready for occupancy upon arrival.

(2) For each affected employee, reimbursement shall be made for transporting as many as two automobiles, by commercial carrier, provided that the low blue book value of each automobile exceeds the cost of shipment. Automobiles eligible to be shipped must be owned by the employee, the employee's spouse, or a dependent child of the employee. Insurance up to the low blue book value of the automobile shipped shall be reimbursed.

(3) Expenses for the shipment, including insurance, of other personal non-business property such as boats, trailers, camping equipment, and mobile homes shall be reimbursed provided that the property shipped was owned by the employee or the employee's spouse prior to the offer of employment at the new location and provided further that shipping costs, including insurance, do not exceed the fair market value of the property shipped. Storage charges for such property shall not be reimbursed.

(4) Reasonable expenses for disconnecting at the former residence and reconnecting at the new residence shall be reimbursed for the following items, provided they are owned by the affected employee or spouse prior to the offer of employment at the new location: mobile home and major appliances (such as ranges, washers, dryers, dishwashers, refrigerators, freezers, television sets, and television antennae). Expenses for installation of a 220 volt power line at the new location shall not be reimbursed.

(5) Reasonable service charges by utility companies, including installation charges for telephone service, shall be reimbursed. Refundable deposits or advance billing for telephone service shall not be reimbursed.

(6) Reasonable expenses for the common carrier transportation of pets, including feeding, shall be reimbursed when such transportation is necessary.

(7) Reimbursement shall be made for actual rental fee, mileage charges, and gas for rental truck or trailer used to move the household and personal effects subject to following conditions:

(i) The time limit allowable for rental fees for a truck or trailer may not exceed 10 days; and

(ii) Expenses detailed in paragraph (c)(1), (c)(3), (c)(4), and (c)(5) of this section shall be reimbursed, where applicable.

(d) *Advance payment.* Advances shall be granted for moving expenses, living expenses, and travel expenses based on estimates the affected employee obtains from common carriers or from a truck leasing agency. The amount advanced may not exceed 80% of the estimated total cost.

(e) *Relocation on or prior to October 2, 1980.* An affected employee who relocated during the period beginning May 31, 1977 and ending on October 2, 1980, shall furnish to the EDD within 90 days following October 2, 1980 the appropriate documentation supporting a claim for a job relocation allowance and a notarized affidavit that the listed expenses and amounts claimed are correct to the best of his/her knowledge.

(f) *Relocation after October 2, 1980.* An affected employee who relocates after October 2, 1980 the effective date of these regulations must submit receipts or invoices and mileage costs to the EDD within 90 days after completion of the relocation.

(g) *Reimbursement for losses or cost.* In connection with a job relocation, if an affected employee relocates after June 30, 1979, and incurs costs or a loss in the sale of a home or the cancellation of an unexpired lease, a statement describing same and requesting reimbursement shall be submitted to the EDD field office where the request for the job relocation was originally filed within 90 days after October 2, 1980. If an affected employee relocated during the period beginning May 31, 1977 and ending on October 2, 1980 the effective date of these regulations, the statement must be submitted to the appropriate EDD field office within 90 days following October 2, 1980. To obtain reimbursement for a loss on the sale of a home, an affected employee must:

(1) Offer the home for sale in the customary manner, at or near the fair market value for a reasonable period of time, and

(2) Furnish EDD with the following information and documents on the residence sold:

(i) Location, including street address, city or town, county, and state;

(ii) Name of the buyer or buyers;

(iii) Date of sale;

(iv) Copy of the closing statement, verifying the selling price;

(v) Fair market value of the house six months before the date of sale based on the average of two appraisals by licensed residential real estate appraisers (three if the appraisals vary by more than five percent);

(vi) Copies of appraisals and receipts or cancelled checks in payment; and

(vii) Amount to be reimbursed (loss on the sale plus the cost of the appraisals).

(3) A protected employee may elect to waive the reimbursement of loss on sale of home and to receive, in lieu thereof, an amount equal to his closing costs which are ordinarily paid for and assumed by a seller of real estate in the jurisdiction in which the residence is located. Such costs shall include a real estate commission paid to a licensed realtor (not to exceed $3,000 or 6 per centum of sale price, whichever is less), and any prepayment penalty required by the institution holding the mortgage; such costs shall not include the payment of any "points" by the seller.

(4) To obtain reimbursement for costs incurred in cancelling a lease of an apartment or a principal residence, an affected employee must submit the following information and documents:

(i) Location, including street address, city or town, and state;

(ii) Date leased premises were vacated;

(iii) Name, address, and telephone number of the party who was advised that the leased premises would be vacated and whether the party advised was the owner or the leasing agent;

(iv) The cancelled check or receipt for payment of a cancellation charge;

(v) The landlord's statement discharging the affected employee from the obligations of a tenant under the lease; and

(vi) The affected employee's lease.

(h) *Challenge on claims for loss or costs.* Should the EDD challenge the value of the home, the costs or loss sustained in its sale, the costs or loss under a contract for purchase, loss or cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee or his representative; a representative of the EDD, and a representative of the U.S. Department of Labor. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected in the following manner: One to be selected by the employee or his representative and one by the U.S. Department of Labor and these two, if unable to agree upon a valuation within 30 days, shall endeavor by agreement within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the California Board of Realtors to designate within 10 days a third qualified real estate appraiser whose designation will be binding upon the parties. A decision of the majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(1) The EDD will be guided in its decision to challenge a loss by the following considerations:

(i) Length of time the home was offered for sale at or near the fair market value;

(ii) Length of time homes of reasonably comparable value and type were on the market prior to sale; and

(iii) The total amount of the loss claimed relative to other claims for loss submitted to the EDD.

(iv) *Overpayment.* If it is found that an affected employee failed without good cause to complete a job relocation, any amount of relocation allowance paid or advanced to the affected employee under this section shall constitute an overpayment. Any overpayment recovered from the affected employee shall be by repayment in cash or by deduction from benefits due the affected employee under the Act or by any other authorized legal action.

§ 92.33 Overpayment—general.

If the EDD, a referee, the Assistant Secretary, or a court of competent jurisdiction finds that an individual has received benefits to which the individual was not entitled under the Act then the individual shall be liable to repay the total sum to which the individual was not entitled.

§ 92.34 Recovery of overpayments.

(a) The EDD shall take all reasonable measures under State or Federal law to recover for the account of the United States the sum of the payment to which the individual was not entitled in accordance with the provisions of § 92.33.

(b) When recovery is undertaken the EDD shall recover, insofar as is possible, the amount of any overpayment which is not repaid by the individual, by: deductions from any benefits or allowances payable to the individual under the Act; from any compensation payable to the individual under any Federal unemployment compensation law administered by the EDD; or under any other federal law administered by the SESA of any other state, or, by the EDD which provides for the payment of any assistance or allowance with respect to any week of unemployment. The amount of this deduction shall not exceed the amount which might be withheld if the Consumer Credit Protection Act were applicable.

§ 92.35 Final decision.

Recovery of any overpayment of benefits shall not be required or enforced until the determination establishing the overpayment has been approved by the Assistant Secretary.

Subpart E—Preferential Hiring

AUTHORITY: Sec. 103, Pub. L. 95-250, 92 Stat. 167.

§ 92.40 Full consideration obligation.

(a) *Types of jobs.* Any employer specified in § 92.40(b) who is filling a job vacancy located primarily in Humboldt, Del Norte or an adjoining California county must give full consideration for employment in that job vacancy to affected employees if:

(1) The job involves skills and training that could reasonably be expected to have been gained by individuals who have been employed as logging and related woods employees or sawmill, plywood, and wood processing employees, or office employees, or that can reasonably be expected to be gained while so employed; or

(2) The applicant has the ability, or can reasonably be expected to have the ability after appropriate training of reasonable duration to perform the duties of the job.

(b) *Types of employers.* It shall be an obligation of any employer designated in this section to give full consideration to affected employee applicants for a job vacancy as described in (a) above if the employer is:

(1) A federal agency;

(2) A private employer designated by a federal agency as receiving federal funding assistance in any form or receiving the right after March 27, 1978 to use federal property in the conduct of harvesting and related activities, or replanting and land rehabilitation, or the conduct of wood processing and related activities or the conduct of highway construction and related activities;

(3) An affected or industry employer who has entered into an agreement with the EDD or other State Job Services to give full consideration to affected employees; or

(4) The State of California government, or a county and local governent within Humboldt and Del Norte Counties in California which has agreed to cooperate with the EDD in giving full consideration to affected employees when filling government job vacancies.

(c) *Selection.* An employer specified in § 92.40(b) shall have met the obligation to provide full consideration to affected employee applicants if the employer has used its normal employment standards to evaluate the applicant's qualifications for the position to be filled, and

(1) Selected a qualified affected employee applicant over non-affected employee applicants,

(2) Selected from among qualified affected employee applicants the applicant with the greatest creditable service where the qualifications of the applicants are approximately equal, or

(3) Held the full consideration job vacancy open for a non-qualified affected employee applicant who can be expected to qualify for the job after undergoing training approved by EDD.

(d) *Listing.* Any employer specified in § 92.40(b) who is filling a job described in § 92.40(a) shall provide notice of such job vacancy and the job requirements through the offices of the EDD in Humboldt and Del Norte Counties, California.

§ 92.41 Employee full consideration obligation.

(a) *Employee application requirements.* Any affected employee desiring to apply for a full consideration job vacancy must:

(1) Advise an EDD office of the full consideration position for which he/she wishes to be considered, and

(2) Demonstrate that the full consideration job vacancy involves skills and training which he/she could reasonably be expected to have gained in his/her affected employment, or

(3) If not already in possession of the requisite skill, demonstrate that he/she can reasonably be expected to have the ability to perform the job after appropriate training of reasonable duration.

§ 92.42 EDD full consideration responsibility.

(a) *Lists.* The EDD shall maintain lists of full consideration job vacancies as reported by Federal agencies; affected industry and other private employers; and the State of California, and its county and local governments in Humboldt, Del Norte and adjacent California counties.

(b) *Training.* An applicant for a full consideration job vacancy shall, if appropriate, be provided with training if the period of work following training is commensurate with the time and funds required to provide the necessary training. Full consideration of an applicant shall not be required when the EDD has determined that the period of work following training is not commensurate with the training time and funds.

(c) *Referral.* Where two or more affected employee applicants for a full consideration job vacancy have approximately equal qualifications the EDD shall give preference in referral and listing to the applicant with the greatest creditable service.

§ 92.43 Violations of full consideration obligations.

(a) *Right of appeal.* Any affected employee who alleges that his/her rights to full consideration have been disregarded may file a complaint with any office of the EDD which shall forward the complaint to the national office of the LMSA for processing. Where noncompliance with the full consideration obligation is determined, the U.S. Department of Labor shall take appropriate corrective action.

§ 92.44 Judicial review.

Determinations under this section shall be subject to Judicial Review under the same conditions as provided in § 92.50(t).

§ 92.45 Preexisting rights.

Nothing in this subpart shall be construed to affect any additional or alternative rights under law, contract or regulation in effect as of March 27, 1978.

§ 92.46 Period of preferential hiring.

The requirement for full consideration as contained in this subpart, shall remain in effect from March 27, 1978 through September 30, 1984.

Subpart F—Appeal Procedure

AUTHORITY: Sec. 213(d)(2), Pub. L. 95-250, 92 Stat. 182.

§ 92.50 Administration.

(a) *Parties.* The parties to a proceeding on an application for benefits are:

(1) The applicant;

(2) The EDD;

(3) Other SESA's if involved; and, in addition;

(4) Any other individual or organization who is or may be adversely affected by grant or denial of an application for benefits may request leave to participate as an intervening party with respect to the application for REPP benefits in proceedings before an administrative law judge, or before the Assistant Secretary. Leave to intervene shall be granted on such terms and conditions as are deemed appropriate by the administrative law judge or the assistant secretary.

(b) *Parties may appeal.* Any party to a proceeding on an application for benefits may appeal the determination or redetermination.

(c) *Reconsideration of determination.* The EDD may reconsider a determination on an application for benefits under the same conditions and subject to the same time limits as apply to reconsideration or determinations of entitlement to unemployment insurance under the California Unemployment Insurance Code and California Unemployment Insurance Appeals Board regulations under Title 22 of the California Administrative Code.

(d) *Notice of determination.* Each party to a proceeding on an application for benefits shall be given written notice of the determination or reconsidered determination by EDD.

(e) *Notice of appeal rights.* All parties shall receive notice of each determination, reconsidered determination, or decision on an application for benefits. The notice shall advise each applicant of his/her right to appeal or to request reconsideration of the determination or decision. Such notice shall include the manner in which the appeal or request for reconsideration should be made, and the time period for making such appeal or request for reconsideration.

(f) *Appeal from determination.* A party aggrieved by or dissatisfied with a determination or reconsidered determination on an application for REPP benefits may appeal to an Administrative Law Judge (ALJ) of the California Unemployment Insurance Appeals Board.

(g) *Contents of appeal to ALJ.* An appeal to an ALJ under paragraph (f) of this Section must:

(1) Be mailed to or filed at the EDD field office where the application was initially filed within 20 days after notice of such determination or reconsidered determination was mailed or personally served on the party;

(2) Be in writing;

(3) Identify or include a copy of the determination or reconsidered determination;

(4) State that the party desires to appeal to an administrative law judge;

(5) Contain a statement of the reason(s) why the appealing party believes that an error has occurred; and

(6) Be signed by the appealing party or an authorized representative.

Notwithstanding the requirements in (g)(5) of this section, any written document indicating that a party is aggrieved by or dissatisfied with a determination or reconsidered determination on an application for REPP benefits which is received by the EDD field office where the application was initially filed within 20 days after notice of such determination was personally served or mailed to the party shall be accepted as a valid notice of appeal; provided, that the ALJ may require the appealing party, prior to the hearing on his/her appeal, to submit a written statement of the reason(s) why the appealing party believes that an error has occurred.

(h) *Notice of hearing before ALJ.* Upon the filing of an appeal, a hearing shall be promptly scheduled and a notice of the hearing shall be mailed to each party.

(i) *Rules of evidence.* (1) The technical rules of evidence shall not apply. Any evidence may be received at any stage of the appeal; an ALJ or the Assistant Secretary may exclude any evidence or offer of proof which is immaterial, irrelevant, unduly repetitious, or customarily privileged.

(2) A party shall have the right to present its case by oral and documentary evidence and to submit rebuttal evidence.

(j) *Hearing before an ALJ.* The ALJ shall have jurisdiction to decide all relevant issues with respect to an applicant's entitlement to REPP benefits without regard to whether such issues were set out in the appeal. The ALJ may issue subpoenas to obtain the appearance of witnesses or the presentation of documents and exhibits on the same terms and conditions as apply with respect to the issuance of subpoenas in unemployment insurance benefit appeal hearings under the California Unemployment Insurance Code.

(k) *Notice of an ALJ's decision.* Notice of an ALJ's decision on an appeal of an application for REPP benefits shall be sent to each party. In addition, a copy shall be sent to the LMSA national office. Each party shall be notified of his/her right of appeal and shall be notified within 30 days whether the Assistant Secretary has determined to review the case on his/her own motion.

(l) *Appeal from an ALJ's decision.* A party aggrieved by or dissatisfied with an ALJ's decision on an application for REPP benefits may appeal such decision to the Assistant Secretary.

(m) *Appeal to Assistant Secretary.* An appeal to the Assistant Secretary must:

(1) Be addressed to the Assistant Secretary of Labor for Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, D.C. 20216; and delivered or mailed to the Assistant Secretary within 20 days after the day on which notice of the ALJ's decision was handed or mailed to such party;

(2) Be in writing;

(3) Identify or include a copy of the Administrative Law Judge's decision appealed from;

(4) State that the party desires to appeal from the decision;

(5) Contain a statement of the reason(s) why the appealing party believes that an error has occurred; and

(6) Be signed by the appealing party or an authorized representative.

Notwithstanding the requirement in (m)(5) of this section, the Assistant Secretary shall accept as a valid appeal any written document indicating that a party is aggrieved by or dissatisfied with a decision of an Administrative Law Judge on an application for REPP benefits if such document is received by the Assistant Secretary within 20 days after notice of such decision was handed or mailed to such party; provided, that the Assistant Secretary may require the appealing party to submit a written statement of the reason(s) why the appealing party believes that an error has occurred.

(n) *Briefs.* Briefs are not required unless specifically requested by the Assistant Secretary. However, they are welcome and will be considered carefully. Any party may file a brief or written argument in response to a brief or other written argument filed by another party not later than 30 days after such brief or written argument is filed. Briefs or written arguments can not exceed 25 pages unless permission to file a lengthier document is obtained from the Assistant Secretary.

(o) *Service.* A party filing a brief is required to furnish each party with a copy. For purposes of service to the EDD, a copy of the brief must be sent to:

Legal Office, MIC 53, California Employment Development Department, 800 Capital Mall, Sacramento, California 95814.

(p) *Delegation of authority.* The Assistant Secretary may delegate to any employee of the United States Department of Labor the function of reviewing an appeal and preparing a recommended decision with respect thereto, but no employee of the United States Department of Labor who personally participated in any way in any proceedings with respect to an application for benefits will be assigned to prepare a recommended decision on such application for benefits.

(q) *Transmittal of record and transcript.* On receipt of a notice from the Assistant Secretary or his/her designee that an appeal from an Administrative Law Judge's decision with respect to an application for REPP benefits has been filed, or the Assistant Secretary has decided to review the decision, the Office of Appeals of the ALJ hearing the matter shall promptly transmit to the Assistant Secretary or his/her designee a complete record of the proceedings before the ALJ, including all exhibits and documents received or tendered in such proceedings, and a complete copy of the administrative file as to the application for benefits. Upon request from the Assistant Secretary, the CUIAB shall promptly transmit an official transcript of the proceedings to the Assistant Secretary.

(r) *Processing of appeal.* The Assistant Secretary shall review the file with respect to the application for REPP benefits in issue to ascertain whether substantial error adversely affecting the rights of a party has occurred, regardless of whether such error is alleged by an appealing party.

(s) *Decision of Assistant Secretary.* The Assistant Secretary may affirm, reverse, or modify in whole or in part the decision of an ALJ as to an application for REPP benefits, or may remand the case to an ALJ for further proceedings. Notice of an Assistant Secretary's decision shall be forwarded to all parties.

(t) *Judicial review.* A party aggrieved by or dissatisfied with a decision of the Assistant Secretary has 60 days after notice of such decision to file for judicial review in the same manner and under the same conditions as provided by Section 250 of the Trade Act of 1974 which provides:

(1) A worker, group of workers, certified or recognized union, or an authorized representative of such worker or group aggrieved by a final determination by the Secretary may, within 60 days after notice of such determination, file a petition for review of such determination with the United States court of appeals for the circuit in which such worker or group is located or in the United States Court of Appeals for the District of Columbia Circuit. The clerk of such court shall send a copy of such petition to the Secretary. Upon receiving such petition, the Secretary shall promptly certify and file in such court the record on which he based such determination.

(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in Section 1254 of Title 28, United States Code.

(u) *Late appeals.* An appeal to an ALJ under paragraph (f) of this section or an appeal to the Assistant Secretary under paragraph (l) of this section which is not filed within the time for appeal stated in those paragraphs will be dismissed as untimely unless the ALJ or the Assistant Secretary finds that the appealing party has shown good cause for failure to file the appeal within the proper time. The party who fails to appear at a hearing on an appeal may apply to the ALJ within 20 days of said hearing (or longer if the ALJ determines this delay in applying is for good cause) to have the hearing reopened. Such application will be granted if the ALJ finds that the party had good cause for failure to appear.

(w) *Payment of benefits in case of appeal.* (1) Weekly layoff benefits and vacation replacement benefits awarded by a determination, reconsidered determination, or ALJ's decision shall be promptly paid for each week of total or partial unemployment occurring after the date on which the applicant's initial application for benefits was filed, notwithstanding the non-expiration of the period for appeal, or the pendency of an appeal, from such determination, reconsidered determination, or a decision. Weekly layoff benefits and vacation replacement benefits, or other benefits awarded by a determination, reconsidered determination, or decision for a week or weeks of total or partial unemployment occurring prior to the date on which the applicant's initial application for benefits was filed, shall not be paid until the determination, reconsidered determination, or decision awarding them becomes final.

(2) In all cases, a severance payment awarded by a decision of an ALJ or the Assistant Secretary shall not be paid until the decision awarding such payment becomes final.

PART 93—TRANSITIONAL REGULATIONS FOR PROGRAMS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT (CETA)

Sec.
93.1 Maximum wage rates allowable to be paid with CETA funds: Fringe benefits—Sections 122(i) (1) and (3).
93.2 Supplementation provisions.
93.3 Participant eligibility—Sections 213, 221 (a) and (b), 236, 122(j), and 607.
93.4 Fraud and abuse provisions.

AUTHORITY: Sec. 4(d), Pub. L. 95-524, 92 Stat. 2018 (29 U.S.C. 801 note).

Source: 43 FR 61130, Dec. 29, 1978, unless otherwise noted.

§ 93.1 Maximum wage rates allowable to be paid with CETA funds: Fringe benefits—Sections 122(i) (1) and (3).

(a) The Secretary shall issue and publish annually an area wage adjustment index, which shall include the maximum wage rates for each prime sponsor's area. The wage adjustment index shall be based on the ratio that the annual average wages in regular public and private employment in an area served by a prime sponsor bears to the average of all such areas—

(1) Data on average annual wages shall be derived from information provided by employers to State Employment Security Agencies which are responsible for administering State and Federal unemployment insurance (UI) laws. Each quarter of the year, employers in both the private and public sectors of the economy covered by UI laws are required to submit reports containing data on a complete count of workers during the payroll period including the 12th of each month and the total wages paid to all employees for the calendar quarter. Each covered employer is requested to report employment and wages in the county where workers are employed.

(2) The average annual wage for each county shall be computed as the ratio of total wages paid during the calendar year to average monthly employment for the year in the respective counties. In cases where CETA areas represent county combinations and portions of counties, the average annual wage is computed as a weighted average of the wages in component counties based on relative employment in each. In those instances where more than one CETA area is contained entirely within a county, the average annual wage for each prime sponsor is that for the county as a whole, as the basic payroll data are not produced below the county level.

(b) Wages, including money received for overtime work and time on leave, paid to any public service employment participant from funds under the Act is limited to a full-time rate of $10,000 per year (or the hourly, weekly, or monthly rate which, if annualized, would equal a full-time rate of $10,000 per year), except where this maximum is adjusted upward by the Secretary to the amount set forth in the area wage adjustment index described above in paragraph (a). This $10,000 shall not be adjusted upward by more than 20 percent, except for Alaska. In Alaska, the amount in the area wage adjustment index shall be computed by adjusting the $10,000 upward by the exact percentage that the area wage index exceeds the national average wage index.

(c) Fringe benefits to any PSE participants may not exceed those regularly afforded to similarly employed non-CETA workers, but shall never exceed those afforded to non-CETA workers earning an amount equal to the maximum wage.

§ 93.2 Supplementation provisions.

(a) *Supplementation Under Title II D Programs—Section 122(i)(4).* (1) Except as provided in paragraphs (a) (2) and (3) of this section no public service employed participant may be paid wages for any public service employment job from sources other than the Act when such an additional amount would result in a wage in excess of the maximum allowable under § 93.1. This applies even if a participant is entitled to a promotion, a general salary increase or overtime pay. In such cases, such participants must be transferred to other positions or be terminated.

(2) Any person in a public service employment position on September 30, 1978, receiving wages from non-CETA sources may continue to receive such wages, so long as such person remains in the same position. However, where such person was receiving such wages on September 30, 1978, and the amount of the CETA portion of the wages was $10,000, the non-CETA portion shall not be reduced if the maximum wage has been adjusted upward above $10,000 after September 30, 1978.

(3) Any person in a public service employment position on September 30, 1978, who was receiving wages on September 30, 1978, less than $10,000 may have such wages supplemented above $10,000 from non-CETA sources after September 30, 1978, if such increase is a bona-fide cost of living increase or a scheduled raise, and the person remains in the same position.

(b) *Supplementation Under Title VI Programs—Section 609.* Wages paid to public service employees may be supplemented above the maximum wage for the area by additional wages from non-CETA sources only if:

(1) The total amount of funds used in any fiscal year to provide such supplemental wages does not exceed an amount equal to 10 percent of the prime sponsor's Title VI allocation for such fiscal year; and

(2) Such wage supplementation to any public service employee does not exceed:

(i) Ten percent of the maximum wage applicable for the prime sponsor's area; or

(ii) Twenty percent of the maximum wage applicable for the prime sponsor's area in any area where the average wage (during the calendar year preceding the beginning of the applicable fiscal year) in employment covered under Federal or State unemployment compensation laws (without regard to any limitation on the amount of such wages subject to contribution under such law) exceeds 125 percent, but does not exceed 150 percent, of the national average wage in such employment.

(3) Any person in a public service employment position on September 30, 1978, receiving wages from non-CETA sources may continue to receive such wages, so long as such person remains in the same position. These wages are not subject to the limitations of paragraphs (b)(1) and (2) of this section. However, where such person was receiving such wages on September 30, 1978, and the amount of the CETA portion of the wage was $10,000, the non-CETA portion shall not be reduced if the maximum wage has been adjusted above $10,000 after September 30, 1978.

(4) Any person in a public service employment position on September 30, 1978, who was receiving wages on September 30, 1978, less than $10,000 may have such wages supplemented above the $10,000 from non-CETA sources after September 30, 1978, if such increase is the result of a bona-fide cost of living increase or a scheduled raise, and the person remains in the same position. These wages are not subject to the limitations of paragraphs (b)(1) and (2) of this section.

(5) When a public service employment participant, hired after September 30, 1978, is eligible for a promotion, a general salary increase or overtime pay, the employer shall pay from non-CETA funding sources that amount in excess of the maximum amount payable from CETA funds as well as a pro-rata share of the increased fringe benefits, unless such payment would be in violation of the limitations on public service wage supplementation contained in paragraph (b)(1) of this section. If such payment would be in violation, then the partici-

pants affected must be transferred to other positions or be terminated.

§ 93.3 Participant eligibility—Sections 213, 221(a) and (b), 236, 122(j), and 607.

(a) *Title II B Programs.* A person shall be eligible to participate in a program funded under Title II B only if such person is: (1) Economically disadvantaged; and (2) either unemployed, underemployed, or in school.

(b) *Title II D PSE Programs.* An eligible individual must be a person:

(1) Who is economically disadvantaged; who is unemployed at the time of application, and who except for AFDC recipients, has been unemployed during 15 of the 20 weeks immediately prior to application; and

(2) Who resides within the prime sponsor's jurisdiction.

(i) Except as authorized under paragraph (b)(2)(ii) of this section, a program agent or a unit of general local government of 100,000 or more which is not a prime sponsor may not hire persons outside of its jurisdiction nor may their prime sponsors hire persons from their jurisdictions. This does not require the layoff of participants eligible under the residency requirements that were applicable at the time of their selection.

(ii) A prime sponsor or program agent may receive additional funds as a subgrantee of another prime sponsor or program agent to enroll residents of the other prime sponsor or program agent's jurisdiction.

(3) No individual shall be eligible to be employed in a public service employment position if such individual has, within six months prior to the determination, voluntarily terminated, without good cause, his or her last previous full-time employment at a wage rate not less than the Federal minimum wage as prescribed under Section 6(a)(1) of the Fair Labor Standards Act.

(4) Notwithstanding any eligibility limitation on public service employment, a person who on September 30, 1978, held a public service employment position under the Act may continue in such position subject to the length of participation limitations in Section 122(h) of the Act.

(c) *Title VI PSE Programs.* An eligible individual must be a person:

(1)(i) Who, except for AFDC recipients, has been unemployed for at least 10 out of the 12 weeks immediately prior to application for participation, and

(ii) Who is unemployed at the time of application; and

(iii) Whose family income does not exceed 100 percent of the lower living standard income level, annualized based on the three-month period prior to the individual's application for participation, and

(iv) Who resides within the prime sponsor's jurisdiction.

(A) Except as authorized under paragraph (c)(1)(iv)(B) of this section, a program agent or a unit of general local government of 100,000 or more which is not a prime sponsor may not hire persons outside of its jurisdiction nor may their prime sponsors hire persons from their jurisdictions. This does not require the layoff of participants eligible under the residency requirements that were applicable at the time of their selection.

(B) A prime sponsor or program agent may receive additional funds as a subgrantee of another prime sponsor or program agent to enroll residents of the other prime sponsor or program agent's jurisdiction.

(2) No individual shall be eligible to be employed in a public service employment position if such individual has, within 6 months prior to the determination, voluntarily terminated, without good cause, his or her last previous full-time employment at a wage rate not less than the Federal minimum wage as prescribed under Section 6(a)(1) of the Fair Labor Standards Act.

(3) Notwithstanding any eligibility limitation on public service employment, a person who on September 30, 1978, held a public service employment position under the Act may continue in such position subject to the length of participation limitations in Section 122(h) of the Act.

(4) In filling teaching positions in elementary and secondary schools, each prime sponsor shall give special consideration to persons with previous

teaching experience who are certified in the prime sponsor's State.

(d) *Indian and Native American, and Migrant and Seasonal Farmworkers PSE Programs.* (1) The current regulations apply for PSE funded under Sections 302 and 303; and

(2) These requirements apply for PSE funded under Titles II D and VI.

(e) *Definitions for Participant Eligibility Determinations.* The following are the definitions necessary for the determination of participant eligibility:

(1) *Economically disadvantaged*—means a person who is either:

(i) A member of a family which receives public assistance;

(ii) A member of a family whose income during the previous 6 months, on an annualized basis, was such that—

(A) The family would have qualified for public assistance, if it had applied for such assistance, or

(B) It does not exceed the poverty level, or

(C) It does not exceed 70 percent of the lower living standard income level;

(iii) A foster child on whose behalf State or local government payments are made;

(iv) A client of a sheltered workshop;

(v) A handicapped individual who is living at home and who is unemployed;

(vi) Institutionalized in a prison, hospital, or similar institution; or

(vii) A regular outpatient of a mental hospital, rehabilitation facility, or similar institution.

(2) *Family*—means, except as provided in paragraph (e)(2) (ii) or (iii) of this section,

(i) One or more persons living in a single residence who are related to each other by blood, marriage, or adoption. A step-child or a step-parent shall be considered to be related by marriage.

(ii) Except for any person who would be eligible for assistance under Title V of the Older Americans Act of 1965 or a handicapped individual who is 16 years of age or older, anyone claimed as a dependent on another person's Federal Income Tax return for the previous year shall be presumed to be a part of that person's family for the current year.

(iii) An individual 18 or older, who receives less than 50 percent of his/her maintenance from the family, and who is not the head nor the spouse of the head of the household, shall not be considered a member of the family. Such an individual shall be considered a family of one.

(3) *Family income*—means all income received from all sources by all members of the family.

(i) Family income shall include:

(A) Gross wages and salary (before deductions), except wages paid for work experience under the Act, but including wages and salary received by individuals in public service employment or on-the-job training;

(B) Net self employment income (gross receipts minus operating expenses);

(C) Other money income received from sources such as net rents, OASI social security benefits, pensions, alimony, child support, and periodic income from insurance policy annuities, and other sources of income.

(ii) Family income shall exclude:

(A) Non-cash income such as food stamps, or compensation received in the form of food or housing;

(B) Imputed value of owner-occupied property i.e., rental value;

(C) Public assistance payments;

(D) Cash payments received pursuant to a State plan approved under Titles I, IV, X, or XVI of the Social Security Act, or Disability Insurance payments received under Title II of the Social Security Act;

(E) Federal, State or local unemployment benefits;

(F) Payments made to participants in employment and training programs, except wages paid for PSE and OJT;

(G) Capital gains and losses;

(H) One time, unearned income, such as but not limited to:

(*1*) Payments received for a limited, fixed term under income maintenance programs and supplemental (private) unemployment benefit plans;

(*2*) (One-time) or fixed-term scholarship and fellowship grants;

(*3*) Accident, health, and casualty insurance proceeds;

(*4*) Disability and death payments, including fixed term (but not lifetime) life insurance annuities and death benefits;

(*5*) One-time awards and gifts;

(*6*) Inheritances, including fixed term annuities;

(*7*) Fixed term workers' compensation awards;

(*8*) Terminal leave pay;

(*9*) Soil bank payments;

(*10*) Agriculture crop stabilization payments;

(I) Allowances or pay received by any person while serving on active duty in the Armed Forces; and

(J) Educational assistance and compensation payments to veterans and other eligible persons under Chapters 11, 13, 31, 34, 35, and 36 of Title 38, United States Code.

(K) Payments received under the Trade Readjustment Act and the Redwood Forest Act.

(4) *Lower Living Standard Income Level*—means that income level (adjusted for selected Standard Metropolitan Statistical Areas and regional metropolitan and nonmetropolitan differences and family use) determined annually by the Secretary based upon the most recent lower living family budget level issued by the Bureau of Labor Statistics.

(5) *Low income level*—means $7,000 with respect to income in 1969, and for any later year means that amount which bears the same relationship of $7,000 as the Consumer Price Index for that year bears to the Consumer Price Index for 1969, rounded to the nearest $1,000.

(6) *Public assistance*—means Federal, State, or local government cash payments for which eligibility is determined by a need or income test.

(7) *Underemployed persons*—means (i) Persons who are working part time but seeking full time work; and

(ii) Persons who are working full time but receiving wages, not in excess of, the higher of either:

(A) The poverty level; or

(B) Seventy percent of the lower living standard income level.

(8) *Unemployed persons*—means for purposes of determining eligibility

(i) A person who is without a job for at least seven consecutive days prior to application for participation. A person shall be considered as being without a job if, for any calendar week, such person;

(A) Worked no more than 10 hours, and

(B) Earned no more than $30, and

(C) Was seeking and available for work; or

(ii) A person who is

(A) A client of a sheltered workshop;

(B) A prisoner eligible for, or in, a work release program, or

(C) Institutionalized in a hospital or similar institution; or

(iii) A person who is 18 years of age or older whose family receives public assistance, or whose family would be eligible to receive public assistance if both parents were not present in the home; or

(iv) A person who is a veteran who has not obtained permanent unsubsidized employment since being released from active duty.

§ 93.4 Fraud and abuse provisions.

Section 4(b) of the CETA Amendments of 1978 provides for the implementation of provisions relating to the prohibition of fraud and other abuses. Currently, the October 18, 1977, regulations and the appropriate OMB circulars referenced in those regulations contain the majority of the fraud and abuse provisions found in the new CETA Amendments. Since the October 18, 1977, regulations remain in effect, regional offices should instruct prime sponsors of the necessity for their continued compliance with the current requirements.

In addition, the following provisions implement sections in the CETA Amendments of 1978 that prescribe either more specific requirements than in the previous legislation or new fraud and abuse provisions:

(a) *Maintenance of effort—121(e)*. (1) Although the following provisions are substantially the same as those which currently appear in the October 18, 1977, regulations it should be noted that under this new legislation they now apply to all programs under CETA, not just PSE programs.

(2) To ensure maintenance of effort under all programs under the Act—

(i) The recipient shall ensure that such programs—

(A) Result in an increase in employment and training opportunities over those which would otherwise be available;

(B) Not result in the displacement of currently employed workers, including partial displacement, such as reduction in hours of nonovertime work, wages, or employment benefits; and

(C) Not impair existing contracts for services or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed.

(ii) No participant shall be used to provide services normally provided by temporary, part-time or seasonal workers or through contracting such services out, or to fill full-time vacancies, unless documentation is maintained that clearly demonstrates that such action does not constitute the use of funds under the Act for purposes that otherwise would be supported by other funds.

(iii) Funds under the Act shall supplement, and not supplant, the level of funds that would otherwise be made available from non-Federal sources for the planning and administration of programs.

(b) *Unionization and anti-unionization activities—Sections 121(n) and 123(g).* (1) No funds under the Act shall be used in any way to either promote or oppose unionization.

(2) No individual shall be required to join a union as a condition for enrollment in a program in which only institutional training is provided, unless such institutional training involves individuals employed under a collective bargaining agreement which contains union security provisions.

(c) *Independent monitoring unit—Section 121(g).* (1) Prime sponsors shall establish a monitoring unit which shall be independent of, and not accountable to, those units in a prime sponsor's organization being monitored. Such a unit shall be functionally discrete from program operations and shall be responsible for monitoring program compliance. Prime sponsors shall immediately initiate organizational adjustments necessary to provide for this unit to be in place and fully functioning by April 1, 1979.

(2) The prime sponsor shall ensure that this monitoring unit is adequately staffed and trained.

(3) The prime sponsor shall further require each subgrantee, which has the administrative capability as determined by the prime sponsor, to establish and maintain an independent monitoring unit which shall monitor the subgrantee's program through review of program data, observation of program operations and examination of program records to ensure compliance with

(i) The Act and the regulations;

(ii) The provisions of its subgrant;

(iii) The provision of subgrants awarded by it.

(d) *Charging of fees—Section 123(g).* (1) No funds shall be used to pay a fee for the placement of any person in a program under this Act.

(2) No person or organization, including private placement agencies, may charge a fee for the placement or referral of any person in or to such program.

(3) Any contract for payment of such fees shall be void in law and no participant shall be liable for such fees.

(4) Nothing in this section shall prohibit the recipient from entering into a subgrant or contract for the purpose of obtaining outreach, recruitment and/or intake services as part of its approved intake system.

(e) *Conflicts of interest—Section 123(g).* (1) No member of any advisory council under the Act shall cast a vote on any matter which has a direct bearing on services to be provided by that member (or any organization which such member directly represents) or on any matter which would financially benefit such member or any organization such member represents.

(2) Each recipient and its employees shall avoid financial conflict of interest in the conduct of procurement activities, including the procurement activities of its subgrantees and contractors by complying with the recipient code of conduct requirements set forth in Office of Management and Budget (OMB) Circulars A-102, Attachment 0 and A-110, Attachment 0.

No nongovernmental individual, insititution or organization shall be paid funds provided under the Act to conduct an evaluation of any program under the Act if such individual, institution or organization is associated with that program as a consultant or technical advisor.

(f) *Kickbacks—Section 123(g).* No officer, employee or agent of any recipient shall solicit or accept gratuities, favors or anything of monetary value from any person in return for preferential treatment.

(g) *Commingling of funds—Section 123(g).* Recipients shall comply with the applicable requirements of OMB Circular A-102, Attachment A and A-110, Attachment A, regarding separate bank accounts.

(h) *Political patronage—Section 123(g).* (1) No recipient may select, reject, or promote a participant based on that individual's political affiliation or beliefs. The selection or advancement of employees as a reward for political services or as a form of political patronage, whether partisan or not, is prohibited.

(2) There shall be no referrals for CETA jobs or training, nor selection of subgrantees or contractors based on political affiliation.

(i) *Political activities—Section 123(g).* No program may involve partisan or nonpartisan political activities.

(1) No participant may engage in partisan or nonpartisan political activities during working hours.

(2) No participant may at any time engage in partisan or nonpartisan political activities in which such participant represents himself/herself as a spokesperson for the CETA program.

(3) No participant may be employed or outstationed in the office of a member of Congress or a State or local legislator. No person shall be employed in a legislative capacity on any legislative committee or staff.

(4) No participant may be employed or outstationed in positions involving political activities in the offices of other elected or appointed officials, such as Mayors, County Executives, or Governors, or as staff of Executive Committees. Placement of participants in such nonpolitical positions is permissible.

(j) *Lobbying activities—Section 123(g).* No funds may be used—

(1) To attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress (18 U.S.C. 1913); or

(2) For lobbying State or local legislators.

(k) *Religious and anti-religious activities—Section 123(g).* (1) No funds may be used in support of any religious activity. Funds may not be used to support anti-religious activities.

(2) No participant may be employed in the construction, operation, or maintenance of any part of any facility that is used or will be used for sectarian instruction or as a place of religious worship.

PART 94—GENERAL PROVISIONS FOR PROGRAMS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

Sec.

94.1 Scope and purpose of the Act.
94.2 Format for the regulations promulgated under the Act.
94.3 Consolidated table of contents for Parts 94-99.
94.4 Definitions.

AUTHORITY: Comprehensive Employment and Training Act of 1973, as amended (Pub. L. 93-203, 87 Stat. 839, Pub. L. 93-567, 88 Stat. 1845), sec 702(a), unless otherwise noted.

SOURCE: 42 FR 55726, Oct. 18, 1977, unless otherwise amended.

§ 94.1 Scope and purpose of the Act.

(a) It is the purpose of the Act to provide job training and employment opportunities for economically disadvantaged, unemployed and underemployed persons, and to assure that training and other services lead to maximum employment opportunities and enhance self-sufficiency. The purpose of the Act is to be accomplished by the establishment of a flexible and decentralized system of Federal, State and local programs.

(b) The Act is comprised of eight titles, as follows:

(1) Title I establishes a program to provide comprehensive manpower services throughout the Nation, in-

cluding the development and creation of job opportunities, and the training, education and other services needed to enable individuals to secure and retain employment at their maximum capacity.

(2) Title II authorizes public service employment and manpower training programs for unemployed and underemployed persons in areas of substantial unemployment.

(3) Title III provides for the establishment and administration by the Secretary of Labor of:

(i) Special programs for Indians, seasonal farmworkers both migratory and non-migratory;

(ii) Manpower services for youth, offenders, older workers, persons of limited English-speaking ability and other special target groups; and

(iii) Research, training and evaluation of programs and activities conducted under the Act.

(4) Title IV establishes a Job Corps within the Department of Labor to provide residential and non-residential manpower services for low-income disadvantaged your men and women.

(5) Title V establishes a National Commission for Manpower Policy. The responsibilities of the Commission include the examination of national manpower issues, the suggestions of ways and means of dealing with such issues and advising the Secretary on national manpower issues.

(6) Title VI, authorizes additional public service jobs and training programs for unemployed and underemployed persons and provides special provisions for programs in areas of excessively high unemployment.

(7) Title VII sets forth the general provisions, including applicable definitions, under the Act.

(8) Title VIII establishes a Young Adult Conservation Corps, administered by the Department of Labor through interagency agreements with the Departments of Agriculture and Interior.

(c) The regulations in this part govern programs funded under the Comprehensive Employment and Training Act of 1973 prior to amendment and reauthorization in 1978 (Pub. L. 95-524, 92 Stat. 1909), and are thus in many particulars superseded by regulations implementing the reauthorized Comprehensive Employment and Training Act, Pub. Law 95-524, 92 Stat. 1909, which are being codified at 20 CFR Parts 675 *et seq.* Any questions regarding the applicability of any particular regulation in Title 29 should be addressed to the Regional Administrator for the Employment and Training Administration.

[42 FR 55726, Oct. 18, 1977, as amended at 44 FR 37911, June 29, 1979]

§ 94.2 Format for the regulations promulgated under the Act.

(a) The regulations promulgated to carry out the Act are set forth in Parts 94 through 99 of Title 29, Code of Federal Regulations.

(b) As each substantive Title of the Act provides for the establishment of a specific type of program, the regulations promulgated in Parts 94 through 99 provide for a separate part for each basic type of activity (e.g., Part 95 deals with comprehensive manpower programs; Part 96 deals with Title II programs). Two parts are also included which deal with general matters relating to the Act: Part 94 deals with basic explanatory and definitional matters, and Part 98 deals with general administrative matters.

(c) Statutory authority for the regulations contained in Parts 94 through 99 may be found in Section 702(a) of the Act, as well as in other substantive provisions of the Act. Applicable statutory provisions, other than Section 702(a), are noted generally in these regulations.

§ 94.3 Consolidated table of contents for Parts 94-99.

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[42 FR 55726, Oct. 18, 1977, as amended at 42 FR 61822, Dec. 6, 1977; 43 FR 2151, Jan. 13, 1978; 43 FR 14942, Apr. 7, 1978; 43 FR 21859, May 19, 1978; 43 FR 23504, May 30, 1978; 43 FR 43657, Sept. 26, 1978; 43 FR 47937; Oct. 17, 1978]

§ 94.4 Definitions.

The following definitions consistent with section 701(a) of the Act apply to Parts 94 through 99, inclusive except as otherwise set forth in Parts 94 through 99:

(a) "Act" shall mean the Comprehensive Employment and Training Act of 1973, as amended (Pub. L. 93-203, 87 Stat. 839; Pub. L. 93-567, 88 Stat. 1845).

(b) "Allocation" shall mean the distribution of funds among prime sponsors or eligible applicants according to the formulas contained in the Act.

(c)(1) "Area of substantial unemployment" shall mean for Title II any area within a prime sponsor's jurisdiction, other than in relation to an Indian tribe:

(i) Which has a population of at least 10,000 persons;

(ii) Which qualifies for a minimum allocation of $25,000 under Title II of the Act;

(iii) Which has a rate of unemployment of at least 6.5 percent for a period of three consecutive months, as determined by the Secretary of Labor at least once each fiscal year; and

(iv) Where such units comprising the area (census tracts, census divisions, cities, counties, etc.) are contiguous.

(2) "Area of substantial unemployment" shall mean for Title II, in relation to an Indian tribe, an Indian reservation, as a whole, with a rate of unemployment of at least 6.5 percent for a period of three consecutive months, as determined by the Secretary of Labor at least once each fiscal year.

(d) "Audit" shall mean a systematic review or appraisal to determine and report whether:

(1) Financial operations are being properly conducted;

(2) Financial reports are presented fairly; and

(3) Applicable laws and regulations are being complied with. A selected number of operational audits will include a review of economy and efficiency and/or program results of programs under the Act.

(e) "Audit Standards" shall mean those standards set forth in *The Standards for Audits of Government Organizations, Programs, Activities and Functions* promulgated by the Comptroller General of the United States.

(f) "Balance of county" shall mean the area within the jurisdiction of a county, as a prime sponsor or eligible applicant, that is not included in the comprehensive manpower plan of another prime sponsor or eligible applicant.

(g) "Balance of State" shall mean the area within the jurisdiction of a State, as a prime sponsor or eligible applicant, which is not included in the comprehensive manpower plan of another prime sponsor or eligible applicant.

(h) "Capital improvement" shall mean any modification, addition, or restoration which increases the value, usefulness, productivity, or serviceable life of an existing building, structure, or major item of equipment which is classified for accounting purposes as "fixed asset" and the recorded value of which is increased by the cost of the improvement and subject to depreciation.

(i) "Certification" shall mean a legally binding statement that certain requirements have been fulfilled.

(j) "Chief elected official" and "chief executive officer" shall include their designees.

(k) "Community-based organizations" shall mean organizations which are representative of communities or significant segments of communities and which provide manpower services (for example Opportunities Industrialization Centers, Urban League, Jobs for Progress, Mainstream, Community Action Agencies and other community organizations).

(l) "Compensation" as applied to a participant in a Title II program shall mean the wages and salary payable, but does not include fringe benefits or supportive services.

(m) "Consortium" shall mean an entity formed by an agreement among local units of government, consistent with the requirements of § 95.3, to plan and operate a comprehensive manpower program under the Act.

(n) "Contractor" shall mean any person, corporation, partnership, or similar entity or a public agency, which enters into a contract with the Department, with a grantee, or with a subgrantee under the Act.

(o) "Construction" shall mean the erection, installation, or assembly of a new facility or a major addition, expansion, or extension of an existing facility, and the related site preparation, excavation, filling and landscaping or other land improvements.

(p) "Department" shall mean the United States Department of Labor and includes each of its operating agencies and other organizational units.

(q) "Dependent" shall mean:

(1) Any relative for whom the participant has assumed a responsibility for support; and who is either: (i) A member of the immediate household, or (ii) one of the following relatives:

(A) A parent of the participant;

(B) A child of the participant;

(C) A relative of the participant who is unemployed because of a physical or mental disability; or

(2) Any individual who is currently being supported by the participant, is a member of the participant's immediate household; and during the preceding twelve months, earned less than $750.

(r) "Disabled veteran" shall mean a person who served in the Armed Forces and who was discharged or released therefrom with other than a dishonorable discharge and who has been given a disability rating of 30 per centum or more, or a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty.

(s) "Economically disadvantaged" shall mean a person who:

(1) Is a member of a family which receives cash welfare payments under Federal, State or local welfare programs;

(2) Is a member of a family which has a total family income, as defined in paragraph (xxx) of this section, which in relation to family size, does not exceed the poverty level determined in accordance with criteria established by the Office of Management and Budget or 70% of the lower living standard income level, whichever is higher. Family income shall be computed by:

(i) Annualizing all family income received during the 3 months preceding the assignment of the economically disadvantaged classification, or

(ii) If, due to seasonal unemployment (e.g., teachers), seasonal employment, summer employment for youth, or other circumstances, the 3 month period is unrepresentative, totaling family income received during the 12 months preceding the assignment of the economically disadvantaged classification; or

(3) Is a foster child on behalf of whom State or local government payments are made.

(t) "Eligible applicant" for purposes of Title II shall mean a prime sponsor or an Indian tribe on a Federal or State reservation which includes an area or areas of substantial unemployment.

(u) "Employing agency" for purposes of public service employment programs shall mean any employer designated by an eligible applicant, program agent, or other subgrantee, or by the Secretary of Labor, to employ participants pursuant to public service employment programs under the Act. The term shall include an eligible applicant, program agent, or other subgrantee when acting as employer. Private for profit organizations shall not be considered employing agencies under the Act. The administrative arm of a consortium may be an employing agency only for the purpose of hiring participants as administrative staff.

(v) "Family" shall mean one or more persons living in a single household who are related to each other by blood, marriage or adoption. A stepchild who receives at least 50% of his/her support from the stepparent shall be counted as a member of the stepparent's family. A member of a household:

(1) Who is 18 or older;

(2) Who receives less than 50% of his/her maintenance from the family; and

(3) Who is not the head of the household or the spouse of the head of the household, shall not be considered a member of the family. Such an individual shall be considered a family residing alone or in group quarters.

(w) "Federal Audits" shall mean those audits conducted by the U.S. Department of Labor and its agents.

(x) "Federal reservation" shall mean lands which have been set aside for Indian tribes and for which the United States is trustee, as identifed by the Bureau of Indian Affairs, including non-trust land under the tribal jurisdiction.

(y) "Governor" shall mean the chief executive officer of a State or his designee.

(z) "Grantee" shall mean any individual or organization, including a prime sponsor under Title I or Title III of the Act, or an eligible applicant under Title II or Title VI of the Act which receives a grant from the Department to establish or operate any program or activity under the Act.

(aa) "Grant Allotment" shall mean the total amount of funds planned at any given time to be granted to a prime sponsor or eligible applicant for any fiscal year under Title I or Title II of the Act.

(bb) "Health care" includes but is not limited to preventive and clinical medical treatment, voluntary family planning service, nutritional services and appropriate psychiatric, psychological and prosthetic services, to the extent any such treatment or services are necessary to enable a participant to obtain or retain employment under the Act.

(cc) "Indian tribe" shall mean a tribe, group or band of American Indians or Alaska natives identified on the basis of historical, geographical or cultural characteristics, or subpart of such tribe, group or band.

(dd) "Low-income level," which is a definition used only in the allocation of funds under Title I, shall mean an annual income of $7,000 with respect to income in 1969; for any later year it shall mean that amount which bears the same relationship to $7,000 as the Consumer Price Index for that year bears to the Consumer Price Index for 1969, rounded to the nearest $ 1,000.

(ee) "Manpower Allotment" means sums received by a prime sponsor distributed under Secs. 103(a)(1); 103(a)(2); 103(a)(4); and those portions of 103(f) of the Act which provide each prime sponsor with an amount for any fiscal year equal to 90 percent of such area's manpower allotment in the preceding fiscal year.

(ff) "Multijurisdictional Agreement" shall mean an agreement, consistent with the requirements of § 95.3 between a State and any unit of general local government within the State that has a population of at least 100,000 persons, to plan and operate a comprehensive manpower program under the Act.

(gg) "Non-Federal Audits" shall mean those audits conducted by State, county, and city governments or their agents.

(hh) "Obligation" shall mean the amount of funds which a grantor has legally committed and authorized a grantee, subgrantee, or contractor to expend.

(ii) "Offender" shall mean: (A) Any person who is or has been confined in any type of correctional institution, or assigned to a community-based facility, or who is or has been subject to any stage of the judicial, correctional or probationary process where manpower training and services may be beneficial, as determined by the Secretary of Labor, after consultation with judicial, correctional, probationary or other appropriate authorities; or (B) any adult or juvenile who is confined in any type of correctional institution and also includes any individual or juvenile assigned to a community based facility or subject to pretrial, probationary, or parole or other stages of the judicial correctional or probationary process where manpower training and services may be beneficial, as determined by the Secretary, after consultation with judicial, correctional, probationary, or other appropriate authorities.

(jj) "OMB" shall mean the Office of Management and Budget.

(kk) "Participant" shall mean an individual who is eligible for and takes part in activities under provisions of the Act or receives services funded under the Act, except for an individual who receives only outreach and intake services. An individual applicant becomes a participant when:

(1) The individual is declared eligible upon intake; and

(2) The individual receives employment, training or services funded under the Act following intake, except for an individual who receives only outreach and/or intake services.

(ll) "Participant community" shall mean the group or groups of people to be served by a program activity; for example, the unemployed, persons of limited English speaking ability, seasonal farmworkers either migratory or non-migratory, non-reservation Indians, and economically disadvantaged.

(mm) "Placement" shall mean the hiring into unsubsidized employment by an employer of an individual referred by the prime sponsor or its subgrantee or contractor for a job or an interview, providing that the prime sponsor, subgrantee or contractor completed all of the following steps:

(1) Made prior arrangements with the employer for referral of an individual or individuals;

(2) Referred an individual who has not been specifically designated by the employer;

(3) Verified from a reliable source, preferably the employer, that the individual had entered on a job; and

(4) Recorded the transaction on an employer form or other appropriate form.

(mm-1) There are three levels of placement based on the expected duration of the job:

(1) Short-term placements in jobs which are expected to have a duration of three days or less;

(2) Mid-term placements in jobs which are expected to have a duration from four days to one-hundred-fifty days; and

(3) Long-term placements in jobs which are expected to have a duration of more than one-hundred-fifty days.

Placement does not include referral to another program activity, enrollment in education or training courses not supported under the Act, or entrance into the Armed Forces.

(nn) "Poverty level" shall mean the annual income threshold below which families are considered to live in poverty, as determined in accordance with criteria established by the Director of the Office of Management and Budget.

(oo) "Prime sponsor" shall mean a unit of government, combinations of units of government, or a rural Concentrated Employment Program grantee, as set forth in § 95.3, which has entered into a grant with the Department to provide comprehensive manpower services under Title I of the Act.

(pp) "Professional work" shall mean work performed by an individual acting in a bona fide professional capacity, as such term is used in section 13(a)(1) of the Fair Labor Standards Act.

(qq) "*Program agent*" *for purposes* of Title II shall mean a subgrantee within the jurisdiction of an eligible applicant which is a unit of general local government or a combination of such units having a population of

50,000 or more which contains an area of substantial unemployment or is part of an area of substantial unemployment. In determining whether a combination of units of general local government qualifies as a program agent, the eligible applicant shall use the following standards:

(1) The combination of units as a subgrantee possesses the legal authority to receive Federal funds, and to transact business as a representative of the population within its jurisdiction; and

(2) The combination of units as a subgrantee possesses the administrative capability to plan, administer, and operate a manpower program; in making this determination, the eligible applicant may consider whether a combination of units of general local governments which consists of units which are not contiguous to each other is capable of planning, administering and operating a manpower program.

(rr) "Program of demonstrated effectiveness" shall mean a manpower program, including a program conducted by a community-based organization, which has a history of providing manpower services to the economically disadvantaged, which has demonstrated the capacity to meet contractural goals at reasonable costs, and is either (1) a program which has demonstrated to the prime sponsor that it has performed effectively within the prime sponsor's jurisdiction, or (2) a program which can demonstrate to the prime sponsor that it has carried out effectively a similar program under similar circumstances in other jurisdictions and can carry out such a program effectively within the prime sponsor's jurisdiction.

(ss) "Public assistance" shall mean supplemental income or money payments received pursuant to a State plan approved under the Social Security Act, Title IV (Aid to Families with Dependent Children), or under the Social Security Act, Title XVI (Supplemental Security Income for the Aged, Blind, and Disabled), and pursuant to the Indochina, Migration and Refugee Assistance Act of 1975, Pub. L. 94-23.

(tt) "Public service" shall mean service normally provided by government and includes, but is not limited to, work in such fields as beautification, conservation, crime prevention and control, education, child care, environmental quality, fire protection, health care, housing and neighborhood improvements, manpower services, parks, street and other public safety, recreation, rural development, solid waste removal, transportation, veterans outreach, and other fields of human betterment and community improvement. It includes part-time work for individuals who are unable to work full-time because of age, handicap or other factors. It excludes building and highway construction work (except that which is normally performed by the prime sponsor or eligible applicant) and other work which inures primarily to the benefit of a private profit-making organization.

(uu) "RA" shall mean the Department of Labor's Regional Administrator for Employment and Training Administration or his designee, having the responsibility for the area in which a prime sponsor or eligible applicant is located.

(vv) "Rate of unemployment" shall mean the number of unemployed persons, as a percentage of the total number of persons in the civilian labor force, as determined by the Secretary.

(ww) "Secretary" shall mean the Secretary of the United States Department of Labor, or his designee.

(xx) "SESA" shall mean a State employment security agency affiliated with the United States Employment Service, established by the Wagner-Peyser Act of 1933, as amended. The term shall include the State public employment services offices and Unemployment Insurance offices.

(yy) "Significant segments" shall mean those groups of people to be characterized, if appropriate by racial or ethnic, sex, age, occupational or veteran status, which causes them to generally experience unusual difficulty in obtaining employment and who are most in need of the service provided by the Act. Other descriptive categories may be used to define a "significant segment," if appropriate.

(zz) "Special veteran" shall mean an individual who served in the Armed Forces in Indochina or Korea, including the waters adjacent thereto, between August 5, 1964, and May 7, 1975, who received other than a dishonorable discharge.

(aaa) "State" includes the fifty states, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(bbb) "State reservation" shall mean an Indian reservation recognized by the State in which it is located.

(ccc) "Subgrantee" shall mean any governmental unit or private nonprofit agency which receives a grant from a prime sponsor, grantee, or eligible applicant under the Act.

(ddd) "Sufficient size and scope" shall mean for Title II an area or combination of areas, other than an Indian reservation, which has a population of 10,000 or more persons and qualifies for a minimum allocation under Title II of $25,000.

(eee) "Supportive or manpower services" shall mean services which are designed to contribute to the employability of participants, enhance their employment opportunities, assist them to retain employment, and facilitate their movement into permanent employment not subsidized under the Act.

(fff) "Underemployed person" shall mean:

(1) A person who is working part-time but has been seeking full-time work, and who is a member of a family whose total family income (as defined in paragraph (xxx) of this section) in relation to his or her family size, does not exceed the poverty level determined in accordance with criteria established by OMB, or

(2) A person who is working full-time and who is a member of a family whose total family income (as defined in paragraph (xxx) of this section) in relation to his or her family size, does not exceed the poverty level determined in accordance with criteria established by OMB.

(3) Family income shall be computed by:

(i) Annualizing family income received during the 3 months preceding the assignment of the underemployed classification, or

(ii) If, due to seasonal unemployment, seasonal employment, summer employment for youth or other circumstances, the 3 month period is unrepresentative, totaling family income received during the 12 month preceding the assignment of the underemployed classification.

(ggg) "Unemployed person" shall mean for Title I activities except in the case of welfare recipient;

(1) A person who is without a job will who want is available for work, defined as follows:

(i) A person who is without a job is a person who did not work during the calendar week preceding the week in which the determination of his eligibility for participation is made. Except in the case of persons described in paragraph (ggg)(2) of this section, the determination of who wants and is available for work will be made by the prime sponsor or his designee. Persons who have been discouraged from seeking work but are currently available for work, shall not be excluded from eligibility.

(ii) If a person is confined in a jail, penitentiary, or other institution and there is a reasonable expectation that release will follow the completion of training within a reasonable time, the individual shall be considered unemployed.

(2) In the case of welfare recipients, and except for purposes of sections 103 and 202 of the Act, the term "unemployed person" shall mean an adult who, or whose family, receives supplemental security income or money payments pursuant to a State plan approved under the Social Security Act, Title IV (Aid to Families with Dependent Children), or under the Social Security Act, Title XVI (Supplemental Security Income for the Aged, Blind and Disabled), or would be eligible for such payments according to the standards set forth at 45 CFR Part 233 and 20 CFR Part 416 if both parents were not present in the home, and

(i) Who is available for work, and

(ii) Who is either without a job or working in a job providing insufficient income to enable such a person and his family to be self-supporting without welfare.

(3) A veteran who has served on active duty for a period of more than 180 days or who was discharged or released from active duty for a service connected disability, shall be immediately eligible, upon release or discharge, for participation in a program under Title I of the Act without regard to the previous calendar week unemployment requirement which would otherwise pertain (38 U.S.C. 2013: *Provided*, The veteran has not obtained permanent, full-time, unsubsidized employment between the time of release and the time of application for participation in Title I.

(hhh) "Unemployed person" shall mean for Title II activities:

(1) A person who is without a job and who wants and is available for work. Except in the case of persons described in subparagraph (2) of this paragraph, the determination of who wants and is available for work will be made by the prime sponsor or his designee. Persons who have been discouraged from seeking work but are currently available for work, shall not be excluded from eligibility.

(2) Except for the purposes of sections 103 and 202 of the Act, an adult who, or whose family, receives supplemental security income or money payments pursuant to a State plan approved under the Social Security Act, Title IV (Aid to Families with Dependent Children), or under the Social Security Act, Title XVI (Supplemental Security Income for the Aged, Blind and Disabled) or would be eligible for such payments according to the standards set forth at 45 CFR Part 233 and 20 CFR Part 416 if both parents were not present in the home, and

(i) Is available for work, and

(ii) Who is either without a job or working on a job providing insufficient income to enable such a person and his family to be self-supporting without welfare assistance.

(3) A person is "without a job" if, during the 30 days preceding his application, he has worked no more than a total of 10 hours or has earned no more than $30 in any calendar week during the 30 days.

(iii) "Unemployment compensation" shall mean the compensation payable in accordance with the provisions of a State or Federal unemployment compensation law, and payments of unemployment assistance in accordance with the provisions of the Disaster Relief Act, trade readjustment allowances in accordance with the provisions of the Trade Expansion Act or the Trade Act of 1974, and payments or similar assistance or allowances in accordance with the provisions of any other Federal law.

(jjj) "Unit of general local government" shall mean any city, municipality, county, town, township, parish, village or other general purpose political subdivision which has the power to levy taxes and spend funds, as well as general corporate and police powers.

(kkk) "Unsubsidized employment" shall mean employment not financed from funds provided under the Act.

(lll) "Veteran" shall mean a person who: (1) Served on active duty for a period of more than 180 days, and was discharged, separated, or released therefrom with other than a dishonorable discharge or (2) was discharged or released from active duty for a service connected disability.

(mmm) "Wagner-Peyser Act" shall mean "An act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes," approved June 6, 1933, (48 Stat. 113), as amended (29 U.S.C. 49 et seq.).

(nnn) "Lower living standard income level" shall mean that income level (adjusted for selected SMSA's and regional, metropolitan and non-metropolitan differences and family size) determined annually by the Secretary based upon the most recent lower living standard budget level issued by the Bureau of Labor Statistics of the Department of Labor.

(ooo) "Project" shall mean, for purposes of Part 99 of this title the same thing as the term "project and activity" used in Sections 607-9 of the Act, that is, "project" shall mean a definable task for group of related tasks which:

(1) Will be completed within a definable time period, not exceeding one year;

(2) Will have a public service objective;

(3) Will result in a specific product or accomplishment; and

(4) Would otherwise not be done with existing funds.

(ppp) "Project applicant" shall mean:

(1) A State;

(2) A State agency;

(3) A unit of general local government;

(4) An agency of a unit of general local government;

(5) A combination or association of units of general local government the primary purpose of which is to assist the governmental units to provide public services;

(6) A special purpose political subdivision having the power to levy taxes and spend funds within an area served by one or more units of general local government;

(7) A local education agency as defined in section 801(f) of the Elementary and Secondary Education Act of 1965;

(8) An institution of higher education as defined in section 1201(a) of the Higher Education Act of 1965;

(9) A community based organization as defined in paragraph (k) of this section;

(10) A community development corporation;

(11) A nonprofit group or organization serving Indians or Native Hawaiians; or

(12) A private non-profit organization or institution engaged in public service.

(qqq) "Rehire" shall mean an individual who has been laid-off from regular unsubsidized employment and who is subsequently recalled as a participant by the former employer into a position funded under the Act.

(rrr) "Exhaustee" shall mean an individual who has made a claim for unemployment compensation and has exhausted all such benefits to which the individual was entitled including Extended Benefits (EB), Federal Supplemental Benefits (FSB), Disaster Unemployment Assistance (DUA), Trade Readjustment Allowance (TRA), Special Unemployment Assistance (SUA), Unemployment Compensation for federal Employees (UCFE), and/or Unemployment Compensation for Exservicement (UCX). Exhaustee status will continue through the existing regular benefit year, at which time a new claim may be filed creating a new status of eligible or ineligible for unemployment compensation.

(sss) "Ineligible for unemployment compensation" shall mean the status of an individual who is for any reason, including disqualification ineligible for unemployment compensation benefits including SUA, DUA, EB, TRA, FSB, UCX, AND UCFE. This includes any individual who is employed in an occupation not covered by unemployment compensation laws, or who is a new entrant or reentrant to the labor force, or who has been unemployed for such an extended period of time that the individual has no work history for unemployment compensation purposes.

(ttt) "Level of sustainment" shall mean, the number of Title II and Title VI slots which the prime sponsor may sustain throughout FY 1977, that is, the number of slots which the program contained on June 30, 1976, or on October 31, 1976, whichever was higher.

(uuu) "Unemployed person" shall mean for Title VI purposes a person who is without a job and who wants and is available for work, including any person who has been discouraged from seeking work but is currently available for work. For purposes of this definition a person is considered to be "without a job" during any calendar week in which he/she has worked no more than a total of ten (10) hours and/or has earned no more than $30.

(vvv) "Hawaiian Native" shall mean any individual, any of whose ancestors were natives of the areas which consisted of the Hawaiian Islands prior to 1778 (Sec. 701(a)(16)).

(www) "Vietnam-era veteran" shall mean a person who:

(1) Served on active duty in the Armed Forces for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, inclusive, and was dis-

charged or released with other than a dishonorable discharge; or

(2) Was discharged or released from active duty in the Armed Forces for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975, inclusive.

(xxx) "Family income" shall mean the sum of all income received from all sources determined as follows:

(1) *Family income shall include*—(i) *Gross wages or salary.* The total money earnings received for work performed as an employee; it represents the amount paid before deductions for income taxes, social security, bond purchases, union dues, etc. (Wages and salaries received by individuals through public service employment and on-the-job training shall be included in income computations);

(ii) *Self-employment income.* Net money income (gross receipts minus operating expenses) from a business firm, farm, or other enterprise in which a person is engaged on his/her own account; and

(iii) *Other income.* Money income received from such sources as net rents, social security benefits (OASI) and disability insurance), pensions, alimony, payments for child support and periodic income from insurance policy annuities.

(2) *Family income shall exclude*—(i) *General.*

(A) Non-cash income, such as food stamps and wages received in the form of food or housing.

(B) Inputed value of owner-occupied property, i.e., rental value.

(C) Cash welfare payments.

(D) Payments made to participants in employment and training programs, such as payments for training, work experience, transportation, and dependency allowances except for those payments specified in paragraph (xxx)(1)(i) of this section.

(E) Capital gains and loses.

(F) One-time unearned income, such as the following (Not intended to be an all-inclusive, list, but designed to illustrate the conceptual framework of one-time unearned income):

(*1*) Payments received for a limited fixed term under income maintenance programs and supplemental unemployment benefit plans.

(*2*) One-time (or fixed term) scholarship and fellowship grants.

(*3*) Accident, health, and casualty insurance proceeds.

(*4*) Disability and death payments, including fixed term (but not lifetime) life insurance annuities and death benefits.

(*5*) One-time awards and gifts.

(*6*) Inheritances, including fixed term annuities.

(*7*) Fixed term workers' compensation awards.

(*8*) Terminal leave pay.

(*9*) Soil bank payments.

(*10*) Agriculture crop stabilization payments.

(ii) *Veterans.* (A) Amounts received as pay or allowances by any person while serving on active duty in the Armed Services.

(B) Educational assistance and compensation payments to veterans and other eligible persons under Chapters 11, 13, 31, 34, 35, and 36 of Title 38, United States Code.

(yyy) "Comprehensive manpower plan (CMP)" shall mean the Prime Sponsor Agreement and the Annual Plans executed pursuant to the Prime Sponsor Agreement.

[42 FR 55726, Oct. 18, 1977, as amended at 43 FR 16974, Apr. 21, 1978]

PART 95—PROGRAMS UNDER TITLE I OF THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

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AUTHORITY: Comprehensive Employment and Training Act of 1973, as amended (Pub. L. 93-203, 87 Stat. 839; Pub. L. 93-567, 88 Stat. 1845), Sec. 702(a), unless otherwise noted.

SOURCE: 42 FR 55734, Oct. 18, 1977, unless otherwise noted.

Subpart A—General

§ 95.1 Scope and purpose of Part 95.

(a) This Part 95 contains the Department of Labor's regulations for the establishment and provision of comprehensive manpower services, including public service employment, under Title I of the Act.

(b) This Part 95 should be read in conjunction with Parts 94 through 99 of this Title 29, Code of Federal Regulations. These parts, in total, comprise the regulations promulgated by the Secretary pursuant to the authority in the Act.

(c) Definitions for acronyms and major terms may be found in Part 94.

(d) Statutory authority for the regulations contained in this Part 95 may be found in section 702(a) of the Act, as well as other substantive provisions of the Act. Applicable statutory provisions, other than section 702(a), are noted generally in these regulations.

(e) The regulations in this part govern programs funded under the Comprehensive Employment and Training Act of 1973 prior to amendment and reauthorization in 1978 (Pub. L. 95-524, 92 Stat. 1909), and are thus in many particulars superseded by regulations implementing the reauthorized Comprehensive Employment and Training Act, Pub. Law 95-524, 92 Stat. 1909, which are being codified at 20 CFR Parts 675 *et seq.* Any questions regarding the applicability of any particular regulation in Title 29 should be addressed to the Regional Administrator for the Employment and Training Administration.

[42 FR 55734, Oct. 18, 1977, as amended at 44 FR 37911, June 29, 1979]

§ 95.2 Allocation of funds.

(a) *General.* (1) This § 95.2 sets out the procedures for allocating funds under Title I of the Act. Of the funds available for Title I in any fiscal year, 80 percent shall be allocated according to the procedures set forth in paragraph (b) of this section. The remaining 20 percent shall be allocated as set out in paragraphs (c) and (d) of this section. (sec. 103)

(2) Allocations made to prime sponsors under this section shall be published in the Federal Register as soon as possible after the enactment of any fiscal year appropriation. The Secretary may publish preliminary allocations to assist prime sponsors in plan-

ning for programs under Title I of the Act.

(3) The Secretary may reallocate Title I funds as provided in § 98.11.

(b) *Prime sponsor basic allocations.* (1) Eighty percent of the funds available under Title I of the Act shall be allocated as provided in this paragraph (b). Funds provided pursuant to this paragraph are for prime sponsors, as defined in § 95.3, except for prime sponsors which are rural Concentrated Employment Programs (CEP). This paragraph (b) does not apply to rural CEP's.

(2) One percent of the amount available under this paragraph (b) shall be allocated by the Secretary to State prime sponsors for the costs incurred in staffing and servicing State Manpower Services Councils. If such funds exceed the amount needed for these costs, the excess may be used to carry out State services under Section 106 of the Act. Allocations under this paragraph shall be made according to the paragraph (b)(4) and (5)(i) allocation formula.

(3) Not less than $2,000,000 of the funds under this paragraph (b) shall be allocated among Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands, consistent with the factors set out in paragraph (b)(4) of this section.

(4) Subject to the requirements of paragraph (b)(5) of this section, funds remaining after application of paragraphs (b)(2) and (3) shall be allocated to prime sponsors according to the following basic formula:

(i) Fifty percent of the funds subject to formula allocation shall be allocated on the basis of each prime sponsor area's proportion of the manpower allotment for all prime sponsor areas in the prior fiscal year;

(ii) Thirty-seven and one-half percent of the funds subject to formula allocation shall be allocated on the basis of a prime sponsor's proportion of the total number of unemployed persons (as defined by the Bureau of Labor Statistics) in all prime sponsor areas;

(iii) Twelve and one-half percent of the funds subject to the allocation formula shall be allocated on the basis of a prime sponsor's proportion of the number of adults in low income families in all prime sponsor areas.

(5)(i) No prime sponsor shall be allocated an amount under the paragraph (b)(4) allocation formula which is more than 150 percent of the amount of the manpower allotment obligated by the RA in the prior fiscal year for the area served by the prime sponsor; except that if the amount so allocated is less than 50 percent of the amount of manpower funds to which it is entitled under the (b)(4) allocation formula, such allocation shall be increased to 50 percent of its entitlement under the formula.

(ii) If any prime sponsor, pursuant to the paragraph (b) (4) and (5) allocation formula, is allocated less than 90 percent of the manpower allotment that was obligated by the RA to that area in the previous fiscal year, that prime sponsor shall, to the extent feasible, be provided an amount from the Secretary's discretionary fund, set out in paragraph (d) of this section, that will bring its funding during the current fiscal year to the 90 percent level.

(c) *Additional prime sponsor allocations.* This paragraph describes those prime sponsor allocations that are not subject to the basic allocation procedures of paragraph (b).

(1) *Consortia incentive funds.* In order to encourage consortia, as defined in § 95.3, that also comprise substantial portions (e.g., 75 percent) of labor market areas, the Secretary may use up to 5 percent of the funds available for Title I of the Act to provide additional funding for such consortia. Consortia which do not serve such areas shall not be eligible for additional funds. Prior to making decisions concerning these funds, the RA shall consult with the Governors of the appropriate States and afford them an opportunity to make recommendations.

(2) *State manpower services allocations.* The Secretary shall allocate to the States, according to the paragraph (b)(4) and (5)(i) allocation formula, 4 percent of the funds available under Title I of the Act, to enable the States to provide services, as set out in Subpart D of this Part 95.

(3) *Allocations for prime sponsors which were rural CEP's.* The Secretary

shall fund a limited number of prime sponsors which were rural CEP's from any funds available to carry out Title I, except funds allocated under paragraph (b).

(4) *Vocational education allocation.* The Secretary shall allocate to the Governors, according to the paragraph (b)(4) and (5)(i) allocation formula, 5 percent of the funds available under Title I to provide financial assistance for vocational education. Each Governor shall allocate these funds as required in Subpart D of this Part 95.

(d) *Secretary's discretionary fund.* Any funds available under Title I that are not allocated under paragraphs (b) and (c) shall be first utilized by the Secretary to assure each prime sponsor, including rural CEP prime sponsors, of funding at the 90 percent level, as set out in paragraph (b)(5)(ii) of this § 95.2. The Secretary shall utilize the remainder of the funds available under this paragraph at his discretion, taking into consideration (1) the provision of incentive funds for multijurisdictional agreements entered into by States, as set out in 95.3 (b) and (d); (2) continued funding through prime sponsors of programs of demonstrated effectiveness; and (3) other factors the Secretary deems necessary to the carrying out of his responsibilities under the Act.

§ 95.3 Eligibility for funds.

(a) Funds may be allocated by the Secretary to prime sponsors (sec. 102). Prime sponsors are:

(1) States;

(2) Units of general local government which have a population of 100,000 or more persons;

(3)(i) Consortia consisting of general local governments which are (A) located in reasonable proximity to each other; (B) each of which retains responsibility for operation of the program; (C) at least one of which has a population of 100,000 or more persons; and (D) which, as a consortium, can plan and operate a comprehensive manpower program that provides administrative and programmatic advantage over the other methods of delivering services under the Act;

(ii) A consortium, under this subparagraph (3), which consists of units of local government in more than one State, may be approved by the RA after the approval of the Governors of the States involved has been obtained.

(iii) No consortium agreement will be approved if one of the parties to the agreement is a unit of local government which is not eligible to be a prime sponsor under the Act and if, in addition, the effect of the agreement is to render ineligible the prime sponsor otherwise responsible for serving the area of the ineligible local government; *Provided, however,* That nothing in this paragraph shall prohibit the otherwise responsible prime sponsor from granting its consent to such a consortium agreement;

(4) (i) Any unit of general local government, or any combination of such units, without regard to population, which, in exceptional circumstances, is determined by the Secretary, after giving serious consideration to comments from the prime sponsor otherwise responsible for the area and the Governor, to serve a substantial portion (e.g., 75 percent) of a functioning labor market area or to be a rural area with a high level of unemployment and to have demonstrated that (A) it has the capability for effectively carrying out a comprehensive manpower program under the Act, evidenced by its effective operation of programs such as CEP or other multicomponent programs, (B) there is a special need for services provided by the Act (e.g., the area has a high proportion of such groups within the population as older workers, high school dropouts, or has a high unemployment rate, substantial outmigration or unique commuting problems), and (C) it will afford administrative and programmatic advantages over other methods of delivering services under the Act;

(ii) The following units of general local government or combination of such units shall automatically be considered as exceptional circumstances prime sponsors since such unit(s) have been determined by the Secretary to meet the requirements of paragraph (a)(4)(i) of this section:

(A) A unit of general local government which was a prime sponsor in the previous fiscal year, had a population of 100,000 or more persons according to the previous year's census update estimate, and has since fallen below 100,000 (but not below 90,000) in population; and

(B) A combination of units of general local government which meet the requirements of paragraph (a)(3)(i) (A), (B), and (D) of this section, which were members of the same consortium in the previous fiscal year, and which contain at least one unit which had a population of 100,000 or more persons according to the previous year's census update estimate, but has since decreased below 100,000 (but not below 90,000) in population; and

(5) A limited number of CEP grantees existing at the time of the enactment of the Act, serving rural areas having a high level of unemployment which the Secretary determines have demonstrated through prior performance a special capability for carrying out programs in such areas and are designated for that purpose.

(b)(1) A State may enter into a multijurisdictional agreement with any unit of local government within the State that has a population of at least 100,000 persons in order to provide services within a designated area. Such an agreement may be approved by the RA when, to the extent consistent with State and local law, each party signatory to the consortium agreement accepts responsibility for the operation of the program, and the RA believes that the parties will, pursuant to the agreement, plan and operate a comprehensive manpower program which provides administrative and programmatic advantages over other methods of delivering services under the Act. All requirements for consortia in Parts 94 through 99 apply to such State multijurisdictional agreements unless otherwise stated.

(2) Incentive funds may be provided for an agreement under paragraph (b)(1) if the agreement includes every eligible prime sponsor in the State.

(c) A consortium which comprises a substantial portion of a functioning labor market (e.g., 75 percent) shall be eligible for incentive funds, as provided in § 95.2(c)(1). The RA shall make such determinations, taking into consideration the definition and listing of labor market areas published by the Department, and the recommendations of the Governors.

(d) Incentive funds for consortia or State multijurisdictional agreements shall be nationally uniform percentage increase of the amount due them under § 95.2(b)(4), but shall not exceed 10 percent of the amount.

(e) No State, unit of general local government, or consortium may apply to be designated as a prime sponsor for any area within its jurisdiction that is also within the jurisdiction of another prime sponsor unless that other prime sponsor consents or fails to submit an approvable grant application or has its grant terminated, in whole or in part, by the Secretary.

(f) Any unit of general local government that does not intend to be served by the prime sponsor which would normally serve it under Title I shall inform that prime sponsor of its determination.

§ 95.4 Data base for determining eligibility.

In order to determine prime sponsor eligibility, the Secretary shall use the 1970 official Census as published by the U.S. Bureau of the Census or Bureau of the Census certified updates which are satisfactory to the Secretary of Labor.

Subpart B—Grant Planning, Application, and Modification Procedures

§ 95.10 General.

This Subpart B provides the procedures for obtaining and modifying a grant to operate programs under Title I of the Act. Specifically, this subpart describes the procedures in the grant award process—from preapplication through the grant application process, to review by the Department, approval or disapproval of the grant, and modification. This subpart also describes the functions of prime sponsor manpower planning councils and State Manpower Services Councils.

§ 95.11 Preapplication for Federal Assistance; consortium agreements.

(a) (1) The Secretary of Labor, through a notice in the FEDERAL REGISTER, shall annually inform all potential prime sponsor applicants of their eligibility to receive funds under Title I. A prime sponsor applicant interested in receiving financial assistance shall submit by a date specified by the Secretary in the FEDERAL REGISTER notice and not later than 30 days prior to the submission of its completed grant application to the clearinghouses for formal review, as specified in § 95.15(c), a preapplication to the RA, the Governor and the appropriate State and areawide A-95 clearinghouses (See Part I of Attachment A, OMB Circular A-95). The preapplication shall consist of Standard Form 424 as prescribed by Federal Management Circular (FMC) 74-7, with an attachment giving the following information:

(i) Population of area(s) to be served;

(ii) Certification that the prime sponsor applicant, except for CEP and consortia prime sponsor applicants, has the required general government authority as defined in § 94.4 of this subtitle;

(iii) Name of any ineligible unit of general local government located within the prime sponsor applicant's jurisdiction that has informed the prime sponsor applicant that it will not be participating in the prime sponsor applicant's grant.

(iv) Certification that the development of the prime sponsor applicant's grant application will be in accordance with the requirements of the Act and regulations; and

(v) The signature of the chief elected official(s) or chief executive officer(s), as appropriate, of each prime sponsor applicant. For a newly formed consortium, and for a consortium in which one or more members have joined or withdrawn, the signature of the chief elected official or chief executive officer of each consortium member is required. In the case of an established consortium with no membership changes, the preapplication may, with the consent of all consortium members, be signed by the consortium's chief executive officer.

(2) State and areawide clearinghouses may request information in addition to that furnished on the preapplication form. Such a request shall be made within a reasonable period of time in order to avoid delay in a prime sponsor applicant's preparation of its grant application.

(3) The A-95 clearinghouses shall, within 30 days of receiving the preapplication, inform the prime sponsor applicant of any actual or potential problems with the preapplication and notify the prime sponsor applicant if they wish to review the completed application. If the prime sponsor applicant receives no such notification, the prime sponsor applicant has fulfilled its obligation under A-95 and it may submit its application to the RA without submitting it to the A-95 clearinghouses as specified in § 95.15(d).

(b) In addition to the preapplication, each consortium of local governments shall, at a date established by the RA, submit for RA approval an agreement covering programs funded under Title I and Title II. The agreement shall include the items required by this paragraph (b). The agreement shall be signed by the chief elected official or chief executive officer of each consortium member. The agreement shall include the following:

(1) A statement that the agreement has been formed under the Comprehensive Employment and Training Act of 1973, as amended, and the dates through which the consortium takes effect. An agreement shall be written to establish a consortium arrangement for the express purpose of conducting a program under the Act or an existing joint powers or other agreement shall be amended to include reference to the Act as part of the agreement.

(2) A listing of the units of government which are parties signatory to the agreement (i.e., the governmental units which are members of a consortium; not those governmental units merely served by a consortium);

(3) A listing of any ineligible governmental unit which would normally be within the jurisdiction of the consortium but has informed the members of the agreement of its desire not to have services provided through the consortium;

(4) A description of the geographical areas which will be served through the agreement;

(5) The population to be served;

(6) A certification that State and local law permits services under the consortium agreement to be provided within the entire geographical area covered by the agreement, including the jurisdiction of any local government located within the geographical area covered by the agreement (i.e., that the agreement is not prevented by State or local law from taking effect in the entire geographical area which it intends to serve);

(7) An attached letter from each unit's chief legal officer assuring that each party signatory has the legal authority, under State or local law, to enter into the consortium agreement (these letters are made part of the agreement);

(8) A statement that one of the following procedures shall be used for signing grant agreements with the Department:

(i) That grant agreements with the Department shall be signed by the chief elected official or chief executive officer of each party to the consortium agreement; or

(ii) That, pursuant to a specific designation in the consortium agreement, grant agreements with the Department shall be signed by the chief elected official or chief executive officer of one or more of the parties to the consortium agreement, or by the chief executive officer of the administrative unit established under paragraph (e)(1) of this section;

(9) A certification that to the extent consistent with State or local law, each party signatory to the consortium agreement accepts responsibility for the operation of the program (i.e., each member of the consortium, rather than any administrative arm, has ultimate responsibility for the program's operation and success);

(10) A description of the powers, functions and responsibilities reserved by the parties to the consortium agreement specifying the process by which decisions will be made, the process by which each party to the agreement will review and approve the grant application, and the procedure by which chief elected officials will participate in the planning and operation of the program, if they so desire. However, no agreement that has been validly entered into prior to the establishment of this requirement by the regulations for this Act published March 19, 1974, need be modified to include this provision;

(11) A statement of the powers, functions and responsibilities which will be delegated to an administrative entity to operate the program and the name and organizational structure of that entity.

(c) An established consortium which submitted an agreement in a prior year shall attest in writing that the agreement remains the same or has been changed in certain specific respects which it shall set forth in the attestation and this attestation shall be signed by the chief elected official or chief executive officer of each consortium member.

(d) In signing grant agreements with the Department, the authorized consortium signator(s) shall certify that the procedures described in the consortium agreement pursuant to paragraph (b)(10) of this section have been utilized.

(e) (1) The consortium shall be the prime sponsor under the Act. An administrative unit or one member of the consortium must be designated to operate the program.

(2) The division of powers, functions, and responsibilities between the consortium members and the administrative unit shall be workable and clearly delineated. The administrative unit may be delegated the power to enter into contracts and subgrants and other necessary agreements, to receive and expend funds, to employ personnel including participants under the Act for the purposes of administering the program only, to organize and train staff, to develop procedures for program planning, operation, assessment and fiscal management, to evaluate program performance and determine resulting need to reallocate resources, and to modify the grant agreement with the Department. The administrative arm of the consortium should have responsibility for the entire operation of the program, but the consortium members shall reserve to the consortium the right of evaluation and the decision to reprogram funds.

(f) A consortium established under these regulations shall have a stated duration at least equal to the period of the grant.

(g) All preapplications from applicants which are eligible only in exceptional circumstances, as defined in § 95.3(a)(4) shall, in addition to the requirements of paragraph (a), include in their preapplications a statement and justification that they meet the requirements of § 95.3(a)(4). Consortia formed in exceptional circumstances shall also submit an agreement as required in paragraph (b).

§ 95.12 Prime sponsor designation.

Upon receipt of a completed preapplication, the RA shall determine whether the applicant is eligible to be designated as a prime sponsor and shall notify the applicant of the determination. Exhibit M-2, Notice of Preapplication Review Action, FMC 74-7 will be used. A grant application package (§ 95.14(b)) shall be sent to each applicant designated as being eligible.

§ 95.13 Planning process; advisory councils.

(a) *General.* An applicant for financial assistance shall submit an approvable grant application, as set out in § 95.14. In developing and modifying such a plan, an applicant shall utilize the advisory councils set out in this section (sections 104, 105, and 107).

(b) *Planning process.* (1) The prime sponsor shall have a planning process for the development of its grant application. That process shall utilize, as appropriate, the advisory councils established in this section and shall also assure the participation in program planning of community-based organizations and the population to be served.

(2) In planning the methods for providing services that will be funded under the Act, the prime sponsor shall review existing services and facilities in the community and give due consideration to the utilization of these facilities which are available from Federal, State, and local agencies, including community based organizations. In reviewing the existing services and facilities, consideration shall be given to the costs, responsiveness, adequacy, and effectiveness of each agency's services to assure that unnecessary duplication has been avoided.

(3) In developing the Title I Annual Plan, the prime sponsor shall not reduce services to youth because of the availability of financial assistance under Subpart 3, Part C of Title III (sec. 346(2)).

(c) *Prime sponsor Manpower Planning Council.* (1) Each prime sponsor shall appoint a Manpower Planning Council representative of the geographic area to be served. The Planning Council function is advisory. The Council's advisory authority does not free the prime sponsor from its final decisionmaking responsibilities under the Act.

(2) The Planning Council shall advise the prime sponsor in the setting of basic goals, policies, and procedures for its program under Title I and Title II of the Act. It shall make recommendation regarding program plans, and provide for continuing analyses of needs for employment, training and related services in such areas. Planning Councils shall monitor all manpower programs funded under Title I and Title II of the Act and provide for objective evaluation of other manpower and related programs operating in the prime sponsor's areas, for the purpose of improving the utilization and coordination of the delivery of such services. The procedures for evaluating programs not funded under Title I and Title II of the Act will be developed in cooperation with the agencies affected. The Planning Council shall make recommendations based upon its analyses to the prime sponsor, which will consider them in the content of its overall decisionmaking responsibility.

(3) Each prime sponsor shall, to the extent practical, include as appointments to its Planning Council members who are representative of the participant community (e.g., women, persons of limited English-speaking ability and other minority groups) and of community-based organizations, the SESA, education and training agencies and institutions, business (e.g., representatives of a locally-based business firm, the National Alliance of Businessmen or Chamber of Commerce)

organized labor, and where appropriate, agriculture. Additionally, each prime sponsor shall invite representatives of appropriate veterans' organizations or groups to serve as temporary members of its Planning Council. (Sec. 305(a) of Pub. L. 95-93.) Generally, staff of State or local government agencies should not take the place of representatives of the participant communities which their agencies serve. Persons representative of other interested groups may also be appointed. The prime sponsor shall appoint a chairperson of the Planning Council and provide professional, clerical, and technical staff to serve it. Funds for supportive services and related staff costs for the Planning Council may be made available from a prime sponsor's basic allocation.

(4) No member of the Planning Council shall cast a vote on any matter which has direct bearing on services to be provided by that member (or any organization with which that member is associated).

(d) *State Manpower Services Council.* (1) A State prime sponsor shall establish, in addition to its Planning Council under paragraph (c), a State Manpower Services Council (SMSC) representative of the geographic area to be served. The SMSC function is advisory and does not relieve the State of its final decisionmaking responsibilities under the Act.

(2) Consistent with the requirements of Section 107 of the Act, the Governor shall appoint Council members, as follows:

(i) At least one-third of the membership of the Council shall be composed of representatives of prime sponsors who have been designated in accordance with procedures agreed upon by the chief executive officers of such prime sponsors. (All prime sponsors within the State need not be represented; whatever the size of the Council, one-third of its membership shall be representatives of prime sponsors within the State).

(ii) One representative shall be appointed from each of the following: The State Board of Vocational Education, the State Advisory Council on Vocational Education, the State employment service, and any State agency the Governor believes has an interest in manpower or manpower-related services within the State (Sec. 203 of the Vocational Education Act of 1973, as amended (Pub. L. 94-482).)

(iii) Representatives shall be appointed from organized labor, business and industry, the general public, community-based organizations, and from the population to be served under the Act (including representation of women, persons of limited English-speaking ability, and other minority groups when such persons represent a significant portion of the participant population). Additionally, representatives of appropriate veterans' organizations or groups shall be invited to serve as temporary members. Generally, staff of State or local government agencies should not take the place of representatives of the participant communities which their agencies serve (sec. 305(a) of Pub. L. 95-93).

(3) The Governor shall appoint a chairman for the Council and provide the Council with professional, technical, and clerical staff. The Council shall meet as it deems necessary.

(4) Council responsibilities shall include, but not be limited to:

(i) Reviewing prime sponsor grant applications, proposed modifications, and comments thereon, particularly for utilization of and coordination with State agencies and for coordination of plans and operations in contiguous areas.

(ii) Reviewing State agency plans for providing services to prime sponsors;

(iii) Making recommendations to prime sponsors, agencies providing manpower services, the Governor, and the general public on improving the coordination and effectiveness of manpower services within the State;

(iv) Monitoring continuously (A) the operation of programs conducted by prime sponsors in the State and (B) the availability, responsiveness, adequacy, and effective coordination of State services provided by all manpower-related agencies. The monitoring conducted by SMSC's shall include an emphasis upon reviewing statewide and inter-prime sponsor issues of utilization and coordination of manpower resources of State agencies, and the coordination of plans and operations in contiguous areas. The extent and procedures for monitoring prime sponsors and State agencies must be defined by the SMSC and publicized to all prime sponsors and State agencies affected prior to their being implemented;

(v) Submitting an Annual Report to the Governor which shall be a public document, and issuing such other studies, reports or documents to the Governor and prime sponsors as the SMSC believes necessary to effectively carry out the Act. The Annual Report shall include an analysis of the coordination achieved during the previous year, efforts taken to effect such coordination, and recommendations on potential actions that would further facilitate effective coordination. This report shall be submitted no later than 120 days after the end of the Federal fiscal year. A copy of this report shall also be submitted to the State Advisory Council on Vocational Education. Comments received from the State Advisory Council on Vocational Education shall be incorporated into the Annual Report to the Governor (Sec. 203 of the Vocational Education Act of 1973, as amended (Pub. L. 94-482));

(vi) Consulting with the State Advisory Council on Vocational Education in order to identify the employment and training vocational education needs within the State and to assess the extent to which, employment training, vocational education, vocational rehabilitation and other programs assisted under this and related Acts represent a consistent, integrated and coordinated approach to meeting such needs (Sec. 203 of the Vocational Education Act of 1973, as amended (Pub. L. 94-482)); and

(vii) Commenting at least once annually on the reports of the State Advisory Council on Vocational Education and incoporating those comments in the Annual Report to the Governor (Sec. 203 of the Vocational Education Act of 1973, as amended (Pub. L. 94-482)).

(5) The Governor shall appoint a representative of the Council to represent the SMSC on the State Advisory Council on Vocational Education.

(6) The Governor shall appoint a representative of the Council to represent the Council on the State Occupational Information Coordinating Committee.

(e) *Combined planning and services councils.* In any State where the State is the only prime sponsor, the prime sponsor planning council may also perform the functions of the State Manpower Services Council. In such instances, the membership of the prime sponsor's planning council shall reflect the membership requirements of the State Manpower Services Council, in addition to meeting the membership requirements of a prime sponsor planning council, except that the provision of § 95.13(d)(2)(i) is not required.

§ 95.14 Content and description of grant application.

(a) *General.* This section describes the grant application which designated prime sponsors shall use to apply for funds under Title I. The application shall consist of two documents, the Prime Sponsor Agreement (PSA) and the Annual Plan (AP). Detailed instructions for completing the application, which is described in summary form below, are contained in the *Forms Preparation Handbook.*

(b) *Prime Sponsor Agreement.* A designated prime sponsor applying for assistance for the first time shall submit to the RA a signed copy of the PSA. A designated prime sponsor which has already entered into a PSA in a previous year shall submit to the RA with its Annual Plan, a certification that the PSA remains the same or that it is revised as described in attachments to the certification. The initial submission and subsequent certification of the PSA are subject to the comment and publication procedures of § 95.15. The PSA shall consist of the Signatory Page, the Narrative Description of General Information Assurances and Certifications, and for consortia, the approved consortium agreement.

(1) *Signatory page.* The Signatory Page, when signed by the designated prime sponsor and the authorized representative of the RA, shall constitute a legal and binding document by which the designated prime sponsor

agrees that all work performed under its Annual Plan will be in accordance with the Act, the Assurances and Certifications and the regulations of 29 CFR Parts 94, 95, 96 and 98.

(2) *Narrative description of general information.* The Narrative Description of General Information shall include a detailed statement on the following items:

(i) *Program purpose.*

(ii) *Geographic description and economic conditions of area to be served.* A brief description of the geographic area to be served and the economic conditions of the area.

(iii) *Approach.* (A) A description of the recruitment and selection methods to be used.

(B) A description of the efforts to be undertaken to increase the participation of qualified disabled veterans and qualified Vietnam-era veterans who are under 35 years of age.

(C) A description of the placement and follow-up mechanisms and procedures to be used.

(D) *Public Service employment program.* (*1*) A description of actions to insure compliance with personnel procedures and collective bargaining agreements for jobs in other than the entry level.

(*2*) A description of the training for supervisory personnel.

(*3*) A description of efforts to remove artificial barriers.

(*4*) A description of the specific steps to be undertaken to provide consideration to special veterans, those veterans who have received other than a dishonorable discharge within four years prior to application, and welfare recipients.

(*5*) A description of the emphasis which will be placed on the development of jobs for veterans which will utilize skills acquired through their military experience.

(iv) *Delivery agents.* (A) An explanation of the methods and criteria to be used in the selection of deliverers of service.

(B) A description of priority given to area skill centers.

(C) A description of efforts to utilize apprenticeship or other on-the-job training opportunities available under Section 1787 of Title 38, United States Code.

(v) *Prime sponsor planning.* (A) A description of the role and procedures of the planning council in submitting recommendations, monitoring, and analyses, as well as information on the location, frequency, and publicizing of meetings, and whether minutes are kept and meetings are open to the public.

(B) A description of the staff support of the council.

(C) A list of the sectors represented on the council.

(D) A description of the participation of community-based organizations and groups in the program plan.

(vi) *Management and administrative plan*—(A) *Organizational structure.* A description of the prime sponsor's organizational structure.

(B) *Administrative controls.* A description of the internal administrative controls including:

(*1*) Monitoring system;

(*2*) Evaluation system;

(*3*) Personnel or merit system (including the prime sponsor's plan for obtaining an acceptable personnel system as required in § 98.14(b));

(*4*) Accounting system;

(*5*) Fiscal reporting and participant tracking system(s);

(C) *Allowance payments system.* A description of the details of the allowance payment system, including waiver provisions.

(D) *Grievance procedures.* A description of the procedures for resolving any complaints, alleging violation of the Act, regulations, PSA, or Annual Plan, of CETA participants, contractors, subgrantees and other parties.

(E) *Equal employment opportunity.* A description of the mechanisms which will be used to assure nondiscrimination and equal employment opportunities.

(3) *Assurances and Certifications.* The Assurances and Certifications form is a signature sheet on which the prime sponsor assures and certifies that it will comply with the Act, the regulations of the Department, other applicable laws, and applicable Federal Management Circulars and Office of Management and Budget (OMB) circulars. The Assurances and Certifica-

tions form appears in the *Forms Preparation Handbook.* Following is a summary of the items which are described in detail on that form:

(i) General Assurances:

(A) Compliance with the Act and regulations, including conformance to amendments;

(B) Compliance with FMC 74-4 and 74-7 and OMB Circular A-95;

(C) Legal authority to apply for the grant (secs. 102(a), 701(a) (9) and (10));

(D) Compliance with Title VI of the Civil Rights Act of 1964;

(E) Non-discrimination (secs. 703(1) and 712);

(F) Compliance with the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (FMC 74-7);

(G) Compliance with the Hatch Act as amended and restrictions on political activities (sec. 710);

(H) Prohibition on use of position for private gain (sec. 702(a));

(I) Access of Comptroller General and Secretary to records and documents pertaining to the Act (sec. 713(2));

(J) Non-support of religious facilities (sec. 703(4));

(K) Maintenance of required health and safety standards (sec. 703(5));

(L) Provision of appropriate employment and training conditions in regard to type of work, geographical region and proficiency of the participant (sec. 703 (4));

(M) Provision of workmen's compensation protection to participants in on-the-job training, work experience, or public service employment programs under the Act at the same level and to the same extent as other employees of the employer who are covered by a State or industry workmen's compensation statute; and provision of workmen's compensation insurance or medical and accident insurance for injury or disease resulting from their participation to those individuals engaged in any program activity under the Act, i.e., work experience, on-the-job training, public service employment, classroom training, services to participants, and other activities, where others similarly engaged are not covered by an applicable workmen's compensation statute (secs. 703(6) and 208(4));

(N) Use of funds under the Act to supplement, rather than supplant funds otherwise available, prohibition on displacement of employed workers by participants employed under the Act, and prohibition on impairment of existing contracts for services (secs. 703(11) and 703(7));

(O) Training only in occupations which require two or more weeks of preemployment training, unless these are immediate employment opportunities (secs. 703(8), and 105(a)(6));

(P) Training which has a reasonable expectation to lead to unsubsidized employment and which provides for the development of participants' potential consistent with their capabilities (secs. 703(9), 105(a)(6), and 703(10));

(Q) Use of funds to supplement rather than supplant the level of funds otherwise available for the planning and administration of the program (sec. 703(11));

(R) Compliance with reporting and recordkeeping requirements of the Act and regulations (secs. 703(12) and 311(c));

(S) Contribution to the occupational development or upward mobility of individual participants (sec. 703(13));

(T) Provision of required administrative and accounting controls (sec. 703(14));

(U) Provision for the manpower needs of youth in the area served (sec. 703(15));

(V) Compliance with minimum wage requirements specified under the Act (secs. 111 (a) and (b) and 208(a)(2));

(W) Compliance with applicable labor standards pertaining to the worksite or training facility (sec. 111(b) and 706);

(X) Services and activities provided under this Act will be administered by or under the supervision of the applicant (sec. 105(a)(1)(B));

(Y) No funds shall be used for lobbying activities in violation of 18 USCA 1913.

(Z) Compliance with Department of Treasury Regulations found at 31 CFR 205.

(AA) Compliance with the provisions in the Clean Air Act and Federal Water Pollution Control Act.

(ii) Additional assurances for Title I programs, as required by the Act:

(A) Provision of manpower services to those most in need of them, and consideration of the need for continued funding of programs of demonstrated effectiveness to serve them (sec. 105(a)(1)(D));

(B) Design of programs of institutional skill training for skill shortage occupations (sec. 105(a)(6));

(C) Submission of a comprehensive plan in accordance with section 105(a) and compliance with the provisions of section 105(b);

(D) Arrangements to assist the Secretary in carrying out his responsibilities under sections 105 and 108 of the Act (sec. 105(a)(7));

(E) Appropriate steps taken to provide for the increased participation of qualified disabled veterans and qualified Vietnam-era veterans who are under 35 years of age;

(F) Arrangements to promote maximum feasible use of apprenticeship or other on-the-job training opportunities available under Section 1787 of Title 38, United States Code. (Sec. 105(a)(3)(e)).

(G) Non-reduction in the numbers of youth to be served from the previous year in aniticipation of the availability of funds under Subpart 3, Part C of Title III and prohibition against decreasing the extent of services offered to these youth (e.g., replacing classroom training with only counseling. (Sec. 346(a)(2)).)

(iii) Additional assurances relating to public service employment programs as follows:

(A) Special consideration be given to the filling of jobs which provide prospects for advancement or continued employment by providing complementary training and manpower services in accordance with procedures established in section 205(c)(4);

(B) Provision of public service jobs, to the extent feasible, in occupational fields most likely to expand within the public or private sector as the unemployment rate recedes (sec. 205(c)(6));

(C) Special consideration in filling transitional public service jobs be given to persons most severely disadvantaged in terms of length of unemployment and prospects for finding employment unassisted, but not authorize the hiring of any person when another person is on lay-off from the same or equivalent job (sec. 205(c)(7));

(D) Prohibition against the use of funds to hire any person to fill a job opening created by the action of an employer in laying off or terminating the employment of any other regular employee not supported under the Act in anticipation of filling such vacancy by hiring an employee to be supported under the Act (sec. 205(c)(8));

(E) Consideration of persons who have participated in manpower training programs (sec. 205(c)(9));

(F) Compliance with periodic review procedures pursuant to section 207(a) of the Act (sec. 205(c)(17));

(G) Removal of artificial barriers to public employment by agencies and institutions receiving financial assistance and contributing, to the maximum extent feasible, to the elimination of artificial barriers to employment and occupational advancement (secs. 205(c)(18) and 205(c)(21));

(H) Maintenance or provision of linkages with upgrading and other manpower programs to assist persons employed in public employment programs to fulfill their career goals (sec. 205(c)(19));

(I) Employment of not more than one-third of the participants in a bona fide professional capacity except in the case of classroom teachers; the Secretary may waive this limitation in exceptional circumstances (sec. 205(c)(22));

(J) Allocation of jobs equitably to local governments and agencies (sec. 205(c)(23));

(K) Provision of jobs in each promotional line which will not infringe upon the promotional opportunities of unsubsidized current employees and provision of jobs only at the entry level in each promotional line until applicable personnel procedures and collective bargaining agreements have been met (sec. 205(c)(24));

(L) Provision of jobs in addition to those that would otherwise be funded by the prime sponsor without assistance under the Act (sec. 205(c)(25));

(M) Appropriate steps taken to provide for the increased participation of qualified disabled veterans and qualified Vietnam-era veterans who are under 35 years of age.

(N) Selection of other than necessary technical supervisory and administrative personnel from the unemployed and underemployed population (sec. 205(c) (20)).

(iv) Special certification for State grantees: Compliance with requirements and provisions of sections 106 and 107 of the Act.

(v) Additional assurance for Title II programs:

(A) Hiring of residents of areas of substantial enemployment for all jobs created under Title II and providing services to benefit residents of such areas.

(vi) Additional assurance for Title VI programs:

(A) Only persons residing in the area served by the eligible applicant under title VI of the Act will be hired to fill jobs created under the Act and that the public services provided by such jobs shall, to the extent feasible, be designed to benefit the residents of such areas except that funds allocated under title VI of the Act (section 603(a)(2)(B)), to an area eligible for assistance under title II of the Act shall only be used to provide project and program opportunities to persons residing in those areas of substantial unemployment as defined in section 204(c). (Sec. 603(a)(2).)

(c) On a date set by the Secretary, an Annual Plan for Title I must be submitted by designated prime sponsors in order to obtain funds under Title I. The Annual Plan is subject to the comment and publication procedures of § 95.15. The Annual Plan shall consist of the following:

(1) *Application for Federal assistance.* The Application for Federal Assistance shall identify the designated prime sponsor and the amount of funds requested and provide information concerning the area to be served and the number of people expected to benefit from the program. Standard Form 424 contained in FMC 74-7 shall be used.

(2) *Annual narrative description of program.* The Annual Narrative Description of Program shall contain a detailed statement of the following items:

(i) *Objectives and needs for assistance.* (A) (*1*) A description of the significant segments which are most in need of service, including a description of the local goals developed for qualified disabled veterans and qualified Vietnam-era veterans who are under 35 years of age; and

(*2*) A breakout of the demographic groups (in terms of age, race, and sex) of the unemployed population, a breakout of the plan of service to each of the demographic groups, and justification for a plan of service to any of the demographic groups which is more than 15 percent below the group's incidence in the unemployed population. Variances in excess of 15 percent which occur because of the prime's concentration on serving its economically disadvantaged and/or underemployed population will be considered adequate justification.

(B) An assessment of job opportunities in the area.

(ii) *Results and benefits expected.* (A) A statement of the specific participant goals the prime sponsor intends to accomplish.

(B) A statement of other goals.

(iii) *Approach*—(A) *Program activities and services.* (*1*) A description of the activities and services to be provided.

(*2*) A description of the participant flow and the relationship among the activities to be provided.

(*3*) A description of programs, if any, designed for persons of limited English-speaking ability.

(*4*) For those applicants intending to request funds under section 303, of the Act, a discussion of how migrants and seasonal farmworkers will be served.

(B) *Delivery agents.* (*1*) A list of deliverers and the services to be provided by each.

(*2*) A description of the linkages established.

(*3*) A list of the manpower related services and facilities which are available from Federal, State, and local agencies and an indication of which have been determined to have demonstrated effectiveness in providing manpower services.

(*4*) An explanation for non-use or duplication of existing services and facilities including programs of demonstrated effectiveness listed in § 95.14(c)(2)(iii)(B).

(C) *Discussion of program planning summary (PPS) and budget information summary (BIS).* (*1*) An explanation of how the PPS reflects the goals, objectives, and activity description provided above.

(*2*) An explanation of how costs were determined by the BIS.

(D) *Property.* A list of any items of capital equipment which individually cost more than $1,000 including quantity and prices.

(iv) *Public service employment program.* (A) For those Title II applicants whose geographic area differs from the Title I areas described in the PSA, a description of the Title II area.

(B) *Analysis of public service needs.* A description of the unmet public service needs.

(C) *Approach.* A description by employing agency of the types of jobs to be funded including: (*1*) An explanation of thow these jobs relate to the public service needs identified in paragraph (c) (2)(iv)(B) of this section.

(*2*) A description of determination of rates of compensation when they differ from what is normally paid by the employer.

(*3*) A description of the education, training, and supportive services to participants.

(*4*) A maintenance of effort verification.

(*5*) A description of plans to improve and expand employment and advancement opportunities of the target population.

(*6*) An explanation of how the public service employment program is integrated with other activities and services.

(*7*) A narrative explanation for basis of funding and job allocation to each local government and agency.

(3) *Program planning summary.* The Program Planning Summary requires a prime sponsor to provide a quantitative statement of planned enrollment levels, the participants to be served by each program activity (classroom training, on-the-job training, public service employment, work experience, and other activities) and planned outcomes for program participants. It shall also include an identification of the significant segments of the population and the number of individuals in each to be served.

(4) *Budget information summary.* The Budget Information Summary shall include a quantitative statement of yearly planned expenditures by cost category (administration, allowances, wages, fringe benefits, training, and services), planned quarterly obligations, and planned quarterly expenditures by program activity.

(5) *Public service employment occupational summary.* The Public Service Employment Occupational Summary shall include a description of proposed public service job opportunites, occupations and wages, including a comparison of such wages for similar unsubsidized jobs in each employing agency. If, at the time of submission of the Annual Plan, final decisions have not yet been made on all jobs to be filled, the Occupational Summary need not be submitted with the Annual Plan. Instead, it shall be submitted to the RA as soon as all jobs are selected but not later than 60 days after the date the Annual Plan is executed.

§ 95.15 Comment and publication procedures relating to submission of grant application.

(a) (1) Prime sponsor applicants are required to make public, provisions of the grant application prior to submission to the RA (Secs. 105(c)(2) and 108).

(2) The requirement to make the grant application public, which is necessary to create public awareness of the proposal and to obtain comments from interested parties, may be fulfilled through public hearings on the grant application or through public notice in newspapers, bulletins, or other media sources. At a minimum, each prime sponsor applicant shall make the proposed plan public as provided in paragraphs (b), (c), and (d) of this section.

(b) (1) Each prime sponsor applicant shall publish in a minimum of one issue of a newspaper or newspapers (including minority newspaper(s), where feasible) which will provide for a general circulation throughout the area to be served by the prime sponsor's plan, a statement indicating the following information:

(i) The source of funds under which the grant is requested;

(ii) The amount of grant allotment;

(iii) A brief summary of the purpose of the grant, e.g., an explanation of the employment and training opportunities which are proposed for funding; and

(iv) The location and hours when the complete grant application and a comparison of performance against prior year's plan through the most recent quarter can be reviewed and the address and phone number where questions and comments may be directed.

(2) The publication shall be made 30 days prior to the submission of the application to the RA. A copy of the newspaper article shall be transmitted to the RA.

(c) Each prime sponsor applicant shall provide a copy of its application for the purpose of commenting thereon, to the Governor 30 days prior to its submission to the RA. At the same time it shall provide a summary to appropriate units of general local government within its jurisdiction with a population of at least 25,000 persons, to appropriate Indian prime sponsors, and to labor organizations representing employees engaged in similar work in the same areas as that for which enrollees will receive subsidized employment or training.

(d) Each applicant that, in response to the submittal of its preapplication, has received notification from the appropriate State and sub-State clearinghouse(s) that it wishes to review the completed application (see § 95.11(a)(3)) should also provide a copy of its application to such clearinghouse(s) 30 days prior to its submission to the RA.

(e) Comments pursuant to paragraph (b), (c) and (d) shall be made to the prime sponsor applicant and the RA within 30 days of publication. A prime sponsor applicant shall acknowledge any written comment made pursuant to this section. It shall inform any party submitting a substantive written comment of whether any plan revision will be made in response to the comment and the reasons for the prime sponsor applicant's determination. The prime sponsor applicant shall provide copies of all written comments to the Planning Council and the Governor. In addition, all substantive written comments and responses will be transmitted to the RA with the grant application, unless the comments which were made during the 30 day period are received after the application's submission. In which case they will be sent separately to the RA.

(f) Where no comments have been received from an A-95 clearinghouse, or where the clearinghouse has not requested to review the grant application, the prime sponsor applicant shall so indicate in the appropriate item on Standard Form 424, noting clearinghouses which sent no response after reviewing the application, and clearinghouses which did not request to review the application after receiving the preapplication.

§ 95.16 Submission of grant application.

(a) Except as indicated in paragraph (b) of this section, each designated prime sponsor shall simultaneously submit to the RA on or before a date set by the Secretary:

(1) An Annual plan for Title I,

(2) A certification that the PSA remains the same or is revised in certain respects, which are described in attachments, and

(3) An Approval Request Letter.

(b) Newly designated prime sponsors shall submit the PSA no later than 30 days prior to the submission of the Annual Plan, on or before a date set by the Secretary. An Approval Request Letter shall accompany the submission. A signed copy of the signatory page will be provided to the designated prime sponsor by the RA indicating approval of the PSA before submittal by the designated prime sponsor of its Annual Plan.

§ 95.17 Standards for reviewing grant applications.

(a) A grant application will be reviewed to determine if it meets the requirements of the Act, the regulations promulgated under the Act, and other applicable law.

(b) In reviewing a grant application as provided in paragraph (a), of this section, the RA shall determine whether:

(1) The application is complete;

(2) The needs and priorities identified in the application are supported and justified by the documentation provided by the prime sponsor;

(3) The planned expenditures for program activities are substantiated by documentation of the needs and priorities identified in the application;

(4) The performance goals identified in the application are reasonable in light of past program experience in the same or similar activities and the documentation provided by the prime sponsor;

(5) Documentation is presented that reasonable arrangements have been made to involve the population to be served and community-based organizations in the planning process, through representation on the Prime Sponsor Manpower Planning Council or through participation in the specific planning of the program;

(6) The prime sponsor applicant's selection of the method of delivery of services is supported by adequate documentation based on availability and capability of delivery agents and appropriateness of services for the population to be served and provides evidence that due consideration has been given to the utilization of those services and facilities available from Federal, State, and local agencies (sec. 105(a)(3)(B));

(7) Maximum efforts have been made to meet the goals of the prior year's plan; such efforts shall include monitoring, evaluation, and remedial activities, such as, but not limited to, modification of the Annual Plan to reflect significant economic changes within the jurisdiction (sec. 105(c)(3));

(8) The administrative costs in the application are reasonable and provide, to the maximum extent feasible, for Federal funds to be expended for direct program activities and services, and, if administrative costs exceed 20 percent of non-public service employment activities whether the prime sponsor has cited an adequate reason and provided supporting documentation. Costs for public service employment other than wages and fringe benefits may not exceed 15 percent (secs. 108(d)(2) and 203(b));

(9) The prime sponsor has adequate internal administrative controls, accounting requirements, personnel standards, monitoring and evaluation procedures, availability of in-service training and technical assistance, and such other policies as may be necessary to promote the effective use of funds provided under Title I of the Act;

(10) All parties required to be afforded an opportunity to comment on the grant application have been afforded such an opportunity;

(11) Any comment on a grant applicaiton evidences noncompliance with the Act, the regulations promulgated pursuant to the Act, or any other applicable law;

(12) Documentation is presented that programs of institutional training are designed for occupations in which skill shortages exist (sec. 105(a)(6)); and

(13) The public service employment job opportunities satisfy the requirements set forth in § 96.23 with the exception of § 96.23(b)(13);

(14) The manpower plan provides for appropriate arrangements by the prime sponsor to promote maximum use of apprenticeship or other on-the-job opportunities pursuant to Section 1787 of Title 38, United States Code (Sec. 105(a)(3)(E)).

§ 95.18 Application approval.

(a) An application for a grant shall be approved if it meets the requirements of the Act, the regulations promulgated under the Act, and other applicable law, and if the RA determines that the prime sponsor has demonstrated maximum efforts to meet the goals of the prior year's annual plan.

(b) An application for a grant from a consortium, or pursuant to a State multijurisdictional agreement, shall be approved if, in addition, to meeting the specifications in paragraph (a), of this section an agreement among the parties has been submitted to and approved by the RA.

(c) (1) A prime sponsor applicant, the Governor, and the A-95 clearinghouse shall be notified by the RA within 7 days after taking action on the application. The Standard Form 424, as prescribed by FMC 74-7, shall be used for this purpose. If any party commenting to the RA pursuant to the A-95 clearinghouse review process recommends disapproval of the grant in whole or in part and if the RA after review of the recommendation determines that the grant should be approved, the RA shall inform the party making the comment of the reasons for the RA's determination on the Standard Form 424, along with the notification of action taken.

(2) Where a clearinghouse has recommended against approval of an application because it conflicts with or duplicates another Federal or federally assisted project, the RA shall consult with the agency assisting the referenced projects prior to taking action on the application.

(d) In addition to notifying the designated prime sponsor as provided in paragraph (c)(1) of this section, if an Annual Plan is approved, the RA shall provide the prime sponsor with a letter indicating approval.

(e) Funding authority will be issued by a Notice of Funding Availability.

§ 95.19 Application disapproval.

(a) An application for a grant shall be disapproved if it fails to meet any requirement of the Act, the regulations promulgated under the Act, or any other applicable law (secs. 105 and 108).

(b) No application shall be disapproved solely because of the percentage of total funds devoted to any allowable program activity.

(c) No application for a grant shall be disapproved until:

(1) The prime sponsor applicant has been notified that its application fails to meet a requirement of the Act, regulations promulgated under the Act, or other applicable law; and

(2) The prime sponsor applicant is provided with suggestions as to those corrective steps which may be utilized to remedy any defect found in the application; and

(3) The prime sponsor applicant has been provided a reasonable opportunity, but not less than 30 days, to remedy any defect found in the application, but has failed to do so.

(d) When an application is disapproved, a notice of disapproval shall be transmitted to the prime sponsor and the Governor, accompanied by a statement of the grounds of the disapproval. Such disapproval shall not be effective until notice and opportunity for a hearing has been provided, as required in Subpart C of Part 98.

§ 95.20 Use of alternative prime sponsors; services by the Secretary.

If an application is not filed, as required, or is denied, or if a grant is terminated in whole or in part during a fiscal year, the Secretary may make provision for the funds so released to be used by the State or another alternative prime sponsor to service the area originally to be served by the primary prime sponsor, or the Secretary may serve such an area directly. In so doing, the Secretary shall make every effort to minimize or prevent any disruption in participant activities (sec. 110(a)).

§ 95.21 Modifications.

(a) *Modifications of the prime sponsor sgreement.* (1) The Signatory Page and the Assurances and Certifications shall only be modified at the initiation of the RA, after consultation with the prime sponsor, to insure compliance with the regulations.

(2) *The narrative description of general information of the PSA.* The Narrative Description shall be modified as follows:

(i) *RA initiated modifications.* RAs may require modification to insure compliance with the regulations, after consultation with the prime sponsor.

(ii) *Prime sponsor initiated modifications.* (A) When significant changes are planned in the systems and procedures, such as a change in the allowance payment system, prior regional office approval is necessary.

(B) The prime sponsor may make any changes other than those described in paragraphs (a)(1), (a)(2) (i), and (ii)(A) of this section without prior regional office approval, but must notify the RA of these changes in writing by the end of the quarter in which the change occurs. Revised portions of the PSA need not be submitted with the notice.

(3) *Format.* Modifications pursuant to paragraphs (a)(1), (A)(2) (i), and (ii)(A) of this section shall consist of the following:

(i) Approval request letter;

(ii) Revised Assurances and Certifications or revised Narrative Description of General Information, as appropriate; and

(iii) A copy of the newspaper announcement required in paragaph (c) of this section.

(b) *Modifications to the annual plan.* (1) A modification to the Annual Plan requiring prior Regional Office approval is required under any of the following conditions:

(i) Change in duration of the annual plan;

(ii) Change in annual plan allotment;

(iii) Substantial change in program design and/or program goals defined as follows:

(A) When the cumulative number of individuals to be served, planned enrollment levels for program activities, planned placement terminations, individuals to be served within significant segments, is to be increased or decreased by 15 percent or more.

(B) For grants of $100,000 or less, when the cumulative transfer of funds among program activities or cost categories exceeds $15,000.

(C) For grants of over $100,000, when the cumulative transfer of funds among program activities or cost categories exceeds $50,000, or 15 percent of the total grant budget whichever is greater.

(D) When the program design is altered significantly such as when there is development or elimination of a program activity, or when 10 percent or more of the public service employment positions (except for Title VI) are to be used for rehiring laid-off employees.

(iv) At the initiation of the RA, after consultation with the prime sponsor, to insure compliance with the regulations and/or to insure responsiveness to changing economic conditions. A prime sponsor is responsible for assuring that its programs are responsive to the changing economic situation in its jurisdiction and for making appropriate modifications to its plan. The RA may request a reassessment and appropriate modification when the RA believes that the changing economic situation in a jurisdiction makes such a reassessment appropriate. If the prime sponsor disagrees with the RA's request for a modification pursuant to the conditions in the paragraph (iv), it may initiate a hearing pursuant to § 98.47.

(2) Annual Plan modifications will not be initiated solely to adjust planned performance to meet actual performance.

(3) *A-95 Clearance.* (i) Modifications require clearance through the A-95 clearinghouses only under the following conditions:

(A) There is a cumulative increase or decrease in funds equal to or more than 15 percent of the Annual Plan allotment for the current program year and/or;

(B) The Annual Plan is extended for a period of more than 3 calendar months and/or;

(C) The RA directs that A-95 clearance is required for a particular modification.

(ii) (A) When A-95 clearance is required, the prime sponsor, whenever possible, shall provide notification to the appropriate A-95 State and areawide clearinghouses of its intent to modify its Annual Plan 60 days prior to submission of the formal modification to the RA. The notification of intent should consist of a revised form SP 424 and a brief description of the anticipated modification. If within 30 days from submission of such notification, the prime sponsor receives no notification from the A-95 clearinghouses that they wish to review the modification, the prime sponsor has fulfilled its obligation under A-95 and may submit its modification to the RA without submitting it to the A-95 clearinghouses as specified in paragraph (b)(3)(ii)(B) of this section.

(B) When a prime sponsor has not provided notification as specified in paragraph (b)(3)(ii)(A) of this section, or when it has provided this notification and the clearinghouses have requested to review the completed modification, the prime sponsor shall in all cases submit a copy of its modification to the clearinghouses for comment 30 days prior to its submission to the RA.

(C) Where no comments have been received from A-95 clearinghouses, or where the clearinghouses have not requested to review the completed modification, the prime sponsor shall so indicate in the appropriate item on the revised Standard Form 424, noting clearinghouses which sent no response after receiving the modification and clearinghouses which did not request to review the completed modification after being notified of the prime sponsor's intent to modify.

(4) A prime sponsor may make any change, consistent with the regulations in this part and Part 98, in its Program Planning Summary, Budget Information Summary, or narrative description which is not set out in paragraph (b)(1) of this section without prior approval, but must show any such change in the First Program Status Summary and Financial Status Report, as appropriate, submitted to the Department after the change has been made. At the same time this report is submitted, an updated Program Planning Summary, Budget Information Summary, or Annual narrative description, as appropriate, shall also be submitted to the RA. Only those lines and columns or portions of the annual narrative affected by the modification need be submitted. Comments and publication requirements do not apply to changes described in this subparagraph (4).

(5) *Format.* Modifications pursuant to paragraphs (b) (1) and (3) of this section shall consist of the following:

(i) Approval Request Letter;

(ii) Revised form SF 424 (if A-95 clearance is required);

(iii) Revised Program Planning Summary and Budget Information Summary for current and future quarters only; except that a modification not involving a change in the Annual Plan allotment must be received in the regional office within 30 days of the beginning of the current quarter in order to include changes to the current quarter goals;

(iv) Narrative description of the changes made and certification that the publication and comment procedures in paragraph (c) of this section have been complied with;

(v) A copy of the newspaper announcement required in paragraph (c) of this section;

(vi) Revised portions of the program narrative description, if appropriate;

(vii) Revised Occupational Summary, if appropriate.

(6) *Incremental funding.* When the Annual Plan allotment is obligated by the RA in increments, each subsequent obligation by the RA requires a new Notice of Fund Availability (NFA) to be signed by an authorized representative of the Department of Labor. This NFA does not require a revised Annual Plan, and does not require publication, comment or A-95 clearance procedures to be followed.

(c) *Publication and Comment.* (1) No later than the date of submission to the RA, a copy of any proposed modification to the PSA and the Annual Plan pursuant to paragraphs (a)(1), (a)(2)(i), (a)(2)(ii)(A), and (b) (1) and (3) of this section shall be forwarded to the Governor and summaries of the modifications shall be provided to appropriate units of general local government with a population of at least 25,000, to appropriate Indian sponsors, and to labor organizations representing employees engaged in similar work in the same area as that for which participants will receive subsidized employment or training; and the prime sponsor shall publish in a minimum of one issue of a newspaper or newspapers (including minority newspaper(s), where feasible) of general circulation throughout the area to be served a notice of the prime sponsor's intent to request a modification, a brief summary of the purpose of the proposed modification, and the location and hours when the complete modification can be reviewed and the phone number where questions and comments may be directed.

(2) Comments pursuant to paragraphs (b)(3)(ii)(B) and (c)(1) of this

section shall be made to the prime sponsor and the RA within 30 days of publication. All substantive written comments and responses will be transmitted to the RA with the modification, unless comments are received after the modification's submission, in which case they will be sent separately to the RA.

(3) A prime sponsor shall acknowledge any written comment made pursuant to this section. It shall inform any party submitting a substantive written comment of whether any plan revision will be made in response to the comment and the reasons for the prime sponsor's determination.

(d) *Notification of action.* (1) RA shall take final action on approval or disapproval of any proposed modification within 30 days of receipt. Within 7 days after taking action, the RA shall notify the prime sponsor and the Governor of the action.

(2) A denial of a prime sponsor's request for a modification shall be subject to the appeal procedures set out in Part 98.

(3) The procedures in § 95.18(c) (1) and (2) shall apply to modifications under paragraph (b)(3) of this section.

Subpart C—Program Operations

§ 95.30 General.

This subpart sets out the program operation requirements for comprehensive manpower services under Title I of the Act. The utilization of funds under Title I is conditioned upon adherence to the Act, the regulations promulgated under the Act and other applicable law.

§ 95.31 Basic responsibilities of prime sponsors.

A prime sponsor shall be responsible for:

(a) Compliance with approved plans and assurances;

(b) Compliance with Part 98 of this title;

(c) Providing equitable service to the demographic groups (age, sex, race) within its unemployed population, taking into account the priorities identified by the Secretary, if any, the significant segments most in need of service and the incidence of underemployed and economically disadvantaged in the prime sponsor's jurisdiction. Where variances as specified in § 95.14 occur in service to the demographic groups, they shall be adequately justified in the Annual Plan.

(d) Designing program operating activities which are, to the maximum extent feasible, consistent with every particpant's fullest capabilities and which will lead to employment opportunities enabling every participant to become economically self-sufficient, and which will contribute to the occupational development or upward mobility of every participant (secs. 101 and 703(9));

(e) Advising all participants of their rights and responsibilities prior to entering the program and granting the opportunity for an informal hearing as provided in § 98.26; and

(f) Making maximum efforts to achieve the provisions of its grant.

§ 95.32 Eligibility for participation in a Title I program.

(a) A person who is economically disadvantaged, unemployed, or underemployed (as defined in § 94.4) may, subject to paragraph (b) of this section, participate in a program offered by the prime sponsor under Title I of the Act (secs. 105(a), and 108(d)).

(b) For the purpose of participating in a public service employment program under Title I of the Act, participation is permitted for persons who:

(1) Reside, as defined in paragraph (c) of this section, anywhere within the geographical area covered by the prime sponsor's grant; and

(2) Are unemployed (as defined for Title I in § 94.4), or underemployed (as defined in § 94.4), or economically disadvantaged (as defined in § 94.4); and are otherwise eligible for participation consistent with the requirements of sections 205(c) and 208 of the Act (sec. 105(a)(5)).

(c) For the purpose of defining residence in paragraph (b) of this section, the term residence shall mean an individual's permanent dwelling place or home, both at the time the individual applies and is selected for participation in a public service employment program under Title I of the Act. In determining whether a particular place is an individual's dwelling place or home, the intention of the individual is the key element. Maintenance of an "address" is not necessarily the same as maintenance of a dwelling place or home.

(d) Program participation shall be limited to citizens of the United States, natives of American Samoa and the Trust Territory of the Pacific Islands, permanent resident aliens and other aliens who have been permitted to accept permanent employment in the United States by the Immigration and Naturalization Service.

(e) (1) Prime sponsors shall take appropriate steps to provide for the increased participation of qualified disabled veterans and qualified Vietnam-era veterans who are under 35 years of age in public service employment programs and job training opportunities under Title I. Specific effort should be made to develop appropriate full or part-time opportunities for such veterans. Each prime sponsor shall develop local goals for service to such veterans taking into consideration their numbers and the number of qualified persons in other significant segments of the population in the area served. These goals shall be included in the prime sponsor's Annual Plan. The prime sponsor should utilize the assistance of the State and local veterans employment service representative in meeting these goals. In addition, prime sponsors shall, in filling public service jobs, give special consideration to special veterans; and they shall exercise maximum efforts to design jobs and job training opportunities for veterans who have received other than a dishonorable discharge within four years before the date of their application. (sec. 305(a) of Pub. L. 95-93.)

(2) Each prime sponsor shall, on a continuing and timely basis, provide information on job vacancies and training opportunities funded under Title I of the Act to the State and local veterans employment service representative for the purpose of disseminating information to eligible veterans (sec. 104(b) of Emergency Jobs and Unemployment Assistance Act of 1974).

(f) Since all Title II, VI, Emergency Employment Act (EEA), participants, and participants under Title X of the Public Works and Economic Development Act (PWEDA) who are enrolled in Title II or VI activities funded through the Department, would also have qualified at time of enrollment for Title I, then a Title II, Title VI, EEA, or Title II or VI PWEDA participant for whom maximum efforts have been made to find unsubsidized employment, or for whom supplemental training or services is needed as a prerequisite to a job, may be transferred into or concurrently enrolled in a program offered by the prime sponsor under Title I of the Act without an intervening period of unemployment. Title III participants who met the eligibility criteria for Title I at the time of their enrollment may also be transferred into or enrolled concurrently in the Title I program (secs. 205(c) (14) and (19), and 105(a)(2)).

(g) While the selection of eligible full-time students for participation in programs, including summer programs, funded under Title I of the Act is not prohibited, prime sponsors should exercise caution in providing for such participation and should provide for such participation only in accordance with the regulations in this Part. Prior to providing for such participation, prime sponsors should give special consideration to those most in need of service, including economically disadvantaged persons of all age groups.

§ 95.33 Types of manpower program activities available.

(a) A prime sponsor may provide any type of manpower program activity which is consistent with the purposes of Title I of the Act. Such program activities include but are not limited to the development and creation of job opportunities, and the training, education, and other services needed to enable an individual to secure and retain employment at the individual's maximum capacity. Program activities should be primarily directed toward the placement of individuals in unsubsidized employment, either directly at the outset of program participation as a result of intake and assessment or indirectly through provision of training or services (sec. 101). As provided in the nondiscrimination provisions of these regulations, the prime sponsors shall not include in the design of its program traditional hiring practices which result in discrimination based on race, creed, color, handicap, national origin, sex, age, political affiliation, or beliefs, and shall not permit such hiring practices to limit its responsiveness to the needs of the economically disadvantaged, unemployed, and underemployed population in the locality.

(b) A prime sponsor may, consistent with these regulations, determine the operating levels and program activities in its area. It may select any of the program activities described in paragraph (d) of this section or devise other activities within the framework of the Act. No prime sponsor plan will be disapproved solely because of the percentage of funds devoted to a particular program activity (sec. 108(c)).

(c) A prime sponsor shall develop special program provisions for persons of limited English-speaking ability when such persons constitute a significant portion of a prime sponsor's program. The prime sponsor shall establish operating procedures for (sec. 301(b)):

(1) Teaching occupational skills in the primary language of such persons for occupations which do not require a high proficiency in English;

(2) Developing new employment opportunities for persons limited in English-speaking ability;

(3) Developing opportunities for promotion within existing employment situations for such persons;

(4) Disseminating appropriate information and providing job placement and counseling assistance in the primary language of such persons;

(5) Conducting training and employment programs in the primary language of such persons; and

(6) Conducting programs designed to increase the English-speaking ability of such persons.

(d) The basic types of manpower activities available to a prime sponsor include, but are not limited to the following:

(1) *Classroom training.* (i) This program activity is any training conducted in an institutional setting designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs. It may also include training designed to enhance the employability of individuals by upgrading basic skills, through the provision of courses in, for instance, remedial education, training in the primary language of persons of limited English-speaking ability, or English-as-a-second-language training.

(ii) Occupational training shall be designed for occupations in which skills shortages exist (sec. 105(a)(6)) and for which there is reasonable expectation of employment (sec. 703(10)). In making these determinations, a prime sponsor shall utilize available community resources such as the local SESA office, the National Alliance of Businessmen, etc.

(iii) Participants' benefits. Allowances and other benefits shall be provided in accordance with § 95.34 and § 98.24 to participants receiving training or education.

(iv) Vocational education services may be supported with funds provided through (A) the prime sponsor's Title I grant or (B) special grants to Governors for vocational education and services in prime sponsor areas. In order to obtain services under (B) of this paragraph the prime sponsor will negotiate nonfinancial agreements with State Vocational Education Boards utilizing the procedures described in Subpart D of this Part 95.

(2) *On-the-job training.* (i) On-the-job training (OJT) is training conducted in a work environment designed to enable individuals to learn a bona fide skill and/or qualify for a particular occupation through demonstration and practice. Such training may be conducted on a "hire first, train later" basis, or with ultimate placement with the training organization or an employer other than the training organization. OJT may involve individuals at the entry level of employment or be used to upgrade present employees into occupations requiring higher skills. Training shall be designed to lead to the maximum development of

participants' potentials and to their economic self-sufficiency.

(ii) Inducements to employers. Prime sponsors may provide payments or other inducements to public or private employers for the bona fide training and related costs of enrolling individuals in the program: *Provided,* That payments to employers organized for profit are only made for the costs of recruiting, training and supportive services which are over and above those normally provided by the employer. Use of a formula which incorporates the trainee's wage as a factor and fixed unit cost contracting are acceptable methods of reimbursement to private-for-profit employers for extraordinary training costs associated with providing on-the-job training. When using a formula, the prime sponsor can reimburse the employer for extraordinary training costs for training on the job, up to a level not to exceed 50 percent of participant wages. Prime sponsors may design other methods of cost reimbursement provided that payments reflect only extraordinary training costs.

(iii) Direct subsidization of wages for participants employed by private employers organized for profit is not an allowable expenditure (sec. 101(5)).

(iv) Labor organization consultation. Appropriate labor organizations should be consulted in the design and conduct of on-the-job training programs where collective bargaining agreements exist with the employer. Prime sponsors shall consider the advice and comments of such labor organizations, when designing OJT programs and negotiating OJT contract provisions and shall ensure that wages for covered positions conform with collective bargaining agreements.

(v) Participants' benefits. Wages and other benefits provided to OJT participants shall be in accordance with conditions specified in § 95.35 of this Subpart and § 98.24.

(3) *Public Service Employment.* (i) Public service employment is subsidized employment with public employers and private non-profit employers who provide public services as defined in § 94.4. This program activity may also include training, manpower services, and other services incident to such subsidized employment. Conditions for participation in public service employment under Title I are contained in § 95.32(b). Operating conditions and allowable expenditures applicable when Title I funds are used for this activity are the same as those used for this activity when Title II funds are used, as enumerated in Subpart C of Part 96 with the following exceptions: §§ 96.20, 96.22, 96.23(b)(13), 96.26 (a)(1), (b), and (c), 96.27, 96.35(a), 96.36(c), and 96.37 (sec. 105(a)(5)).

(ii) Participants' benefits. Wages and benefits for persons in a public service employment program shall be as provided in Part 96 and § 98.24.

(4) *Work experience.* (i) (A) Work experience is a short-term and/or part-time work assignment with a public employer or a private nonprofit employing agency and is designed to enhance the employability of individuals who have either never worked or who recently have not been working in the competitive labor population for an extended period of time, i.e., new or recent entrants into the labor force and re-entrants into the labor force. The work experience activity is designed to increase the employability of such individuals by providing them with experience on a job, an opportunity to develop occupational skills and good work habits and an opportunity to develop specific occupational goals through exposure to various occupational opportunities.

(B) In addition, work experience may include a short-term work assignment while an appropriate classroom training, on-the-job training, or public service employment opportunity funded under this Act is being developed. Prime sponsors are encouraged to limit the participation of individuals placed in work experience while an appropriate activity is being developed to 90-days.

(C) Participation in work experience for purposes other than that indicated in paragraph (d)(4)(i)(B) of this section shall be for a reasonable length of time determined in accordance with the needs of the participant.

(D) Except as provided above, the participation in work experience of individuals whose only manpower need is for employment, e.g., unemployed individuals who have occupational skills and good work habits, is generally inappropriate.

(ii) Prime sponsors shall describe in their grant application the basic design of their work experience activity, including the characteristics of participants who will participate in the work experience activity, the objectives of the activity and the duration and planned outcomes of work experience. In addition, prime sponsors shall differentiate work experience programs from any public service employment provided by the prime sponsor.

(iii) Work experience activities for youth include part-time employment for students attending school, short-term employment for students during summer, short-term employment for out-of-school youth adjusting to a work setting and in transition from school to employment, short-term employment for recent graduates, and short-term or part-time employment for those youth who have no definite occupational goal.

(iv) Work experience for adults includes part-time or short-term employment for the chronically unemployed, retired persons, recently discharged military individuals, handicapped individuals, institutional residents and inmates and others who recently have not been working in the competitive labor population for extended periods of time.

(v) Prime sponsors shall periodically review the progress of each work experience participant to determine whether continued participation in work experience, transfer to another activity funded under this part, placement in unsubsidized employment or some other action is most appropriate. The prime sponsor shall make this determination based on whether the purposes of the work experience activity described in paragraph (d)(4)(i) of this section have been achieved.

(vi) Program outcomes for work experience participants include (A) return to school; (B) enrollment in post secondary education; (C) enlistment in the military services; (D) enrollment in classroom training, on-the-job training or other manpower training and (E) placement in public service employment or unsubsidized employment.

(vii) Work experience in the private for profit sector is prohibited.

(viii) Participant benefits. Each participant in a work experience activity shall receive wages. Wages shall be commensurate with such factors as the type of work performed, the geographic region of the program, and the skill proficiency of the participant. (A) In no event shall the rate be less than the highest of the following: (*1*) The minimum wage rate specified in Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. The exceptions to Section 6(a)(1) shall not apply to work experience participants except as provided in paragraph (B).

(*2*) The minimum wage prescribed by State or local law for similar employment;

(*3*) For participants on federally funded or federally assisted construction projects, the prevailing rate established by the Secretary, in accordance with the Davis-Bacon Act, as amended, when such rates are required by the Federal Statute under which the assistance was provided.

(B) Wages in the Commonwealth of Puerto Rico, the Virgin Islands, and American Samoa shall be consistent with provisions of Federal, State or local law otherwise applicable. Wages in the Trust Territory of the Pacific Islands shall be consistent with local law except on Enewetak Atoll and Kwajalein Atoll where Section 6(a)(1) of the Fair Labor Standards Act applies.

(C) Participants in work experience activities shall be provided workmen's compensation and other fringe benefits as specified in § 98.24.

(D) When a participant in a work experience activity is performing the tasks of regular public service employment type job, wages must be comparable to those paid for the regular public service job, as specified in § 96.34.

(ix) Work experience participants may be outstationed at worksites, including Federal agencies and private nonprofit agencies. Outstationed participants are still to be considered employees of the prime sponsor or its subgrantees or contractors, as appropriate, and shall be assured of the same working conditions and benefits, as specified in § 98.24, as received by other similarly employed employees of the prime sponsor or its subgrantees or contractors not the outstationed worksite).

(x) Work experience, participants may be used in home repair and winterization/weatherization activities as provided in § 98.12(b)(3).

(5) *Services to participants.* This program activity is designed to provide supportive and manpower services which are needed to enable individuals to obtain employment or retain employment through the postplacement services described in paragraph (d)(5)(iv) of this section or to participate in other manpower program activities funded under this Act or any other Act, leading to their eventual placement in unsubsidized employment. Such services include but are not limited to the following:

(i) *Services to applicants.* (A) Outreach;

(B) Intake: This includes screening for eligibility; completion of Part A, B, and C of the Participant Record; the initial determination as to whether the program can benefit the individual; the determination of the manpower activities and services which would be appropriate for the applicant; the determination of the availability of an appropriate manpower activity; a decision on selection; and dissemination of information on the program.

(ii) *Manpower services.* (A) Orientation to the world of work;

(B) Counseling: This includes employment related counseling, testing, and vocational or career exploration;

(C) Employability assessment other than that involved during intake;

(D) Job placement;

(E) Job referral and placement; and

(iii) *Supportive services.* (A) Health care and medical services;

(B) Child care: Day care programs shall comply with applicable State and local standards including State licensing requirements;

(C) Transportation;

(D) Residential support;

(E) Assistance in securing bonds;

(F) Family planning services, provided that such services are made available to a participant only on a voluntary basis, and are not to be a prerequisite for participation in, or receipt of, any services or benefit from the program; and

(G) Legal services.

(iv) *Post-placement services.* Manpower and supportive services, as described in paragraph (d)(5) (ii) and (iii) of this section, may be provided as appropriate to terminated participants who have been placed in unsubsidized employment. These services may be provided at the discretion of the prime sponsor in order to enable the terminated participant to retain employment. Such services may be provided during the 30-day period following a participant's termination from the program.

(v) *Participant benefits.* Allowances as described in § 95.34 may be paid to a participant enrolled in manpower services (e.g., orientation and counseling), as described in this paragraph (5) when such services are a component of another activity as described in § 95.33(d) or when such services are provided on a regularly scheduled basis.

(6) *Other manpower activities.* (i) These activities are manpower activities not described in the categories above, or manpower related activities designed to expand job opportunities and enhance the participation of individuals who are eligible to participate in programs funded under the Act. The approved grant application must describe the basic design of activities undertaken as "other manpower program activities," and the manpower objectives to be accomplished through these activities. These program activities do not fit into any of the above categories, and include, but are not limited to, the following:

(A) Removal of artificial barriers to employment;

(B) Job restructuring;

(C) Revision or establishment of merit systems; and

(D) Development and implementation of affirmative action plans.

(ii) Participant benefits. Allowances as described in § 95.34 may be paid to a participant enrolled in other manpower activities as described in this subparagraph (6) when such activities are a component of another activity described in § 95.33(d) or when such activities are provided on a regularly scheduled basis and are described in the approved grant application.

(7) *Combined activities.* (i) A participant enrolled in any activity funded under the Act may be enrolled simultaneously in any other activity as a component of the participant's primary activity. The primary activity constitutes any activity in which the participant is enrolled for more than 50 percent of the scheduled time.

(ii) Participant benefits. A participant enrolled in a primary activity for which wages are payable and simultaneously in an activity for which allowances are payable may, at the prime sponsor's option, be paid wages for all hours of participation. A participant enrolled in a primary activity for which allowances are payable may, at the prime sponsor's option, be paid allowances for all hours of participation. However, in this latter case, before placing any individual in such an activity, the prime sponsor shall request a determination from the Internal Revenue Service as to whether income from the non-primary component is taxable.

[42 FR 55734, Oct. 18, 1977, as amended at 43 FR 16975, Apr. 21, 1978]

§ 95.34 Training allowances.

(a) *The payment system.* To assure accountability and uniformity, and to facilitate the necessary coordination with other programs, the system for payment of allowances under the Act shall be maintained as a standard payment system which will insure prompt and efficient payment to all participants (sec. 111(a)). A standard payment system is one which consists of a uniform set of procedures, but which may be operated by one or more delivery agents. The payment system shall include the following elements:

(1) Determination of entitlement and computation of amount to be paid;

(2) Issuance and distribution of payments;

(3) Maintenance of payment records and preparation of required reports;

(4) Maintenance of a system to detect and collect overpayments; and

(5) Arrangements with other agencies to obtain necessary information to minimize payments which are unauthorized under this section. This shall include arrangements with:

(i) The State employment security agency to develop a procedure for obtaining information concerning the receipt and verification of unemployment compensation benefits by participants;

(ii) Appropriate agencies for verification of public assistance payments (e.g., local welfare agencies); and

(iii) Training facilities for submittal of payment requests and certification of attendance.

(b) *Selection of delivery agent.* The prime sponsor is required to provide a standard allowance payment system either directly or through contract with an organization or organizations it considers appropriate for its particular circumstances. The prime sponsor in selecting the delivery agent for the payment of participant allowances should give consideration to the use of existing agencies which have experience in operating an allowance payment system, e.g., the Unemployment Insurance Service.

(c) *Eligibility for allowances.* (1) Subject to paragraph (j) of this section and § 95.33(d)(7)(ii), allowances shall be paid to participants for time spent in classroom training. In addition, allowances may be paid for time spent in other activities as specified in § 95.33(d)(6), or manpower services such as orientation and counseling. However, allowances for participation in manpower services or other activities shall be provided only in accordance with § 95.33 (d)(5)(v) and (d)(6)(ii).

(2) No allowances shall be paid for participation in any course or program of study (e.g., a B.A. or B.S. degree program) which exceeds 104 weeks. While prime sponsors may pay for the costs of tuition, books, and related training expenses of courses or programs of study exceeding 104 weeks, at no time during participation in such a course shall allowances be paid. (sec. 111(a)).

(d) *Application for unemployment compensation.* Participants should be encouraged to apply for and claim unemployment compensation benefits, as defined in § 94.4, if they are not already receiving such benefits.

(e) *Basic allowances.* (1) A basic allowance for one week shall, except under the provisions of paragraphs (i) and (j) of this section, equal the highest of:

(i) The minimum hourly wage prescribed by State or local law for employment in the prime sponsor's area, multiplied by the number of hours of participation in which the trainee attends as required, or is absent for good cause; or

(ii) The minimum hourly wage specified in Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, multiplied by the number of hours of participation, which the trainee attends as required, or is absent from for good cause provided that for the Commonwealth of Puerto Rico, the Virgin Islands and American Samoa, the rate shall be consistent with the Federal, State, or local law otherwise applicable. Wages in the Trust Territory of the Pacific Islands, shall be consistent with local law except on Enewetak Atoll and Kwajalein Atoll where the rate in Section 6(a)(1) of the Fair Labor Standards Act applies.

(2) To compute the number of hours of participation, the prime sponsor shall count the time spent in classroom training, and may count the time spent in manpower services or other activities as specified in § 95.33(d).

(3) Dependents allowances, incentive allowances, and additional allowances as described in § 95.34 (f), (g), and (h) are not to be included as a part of the basic allowances.

(f) *Dependents allowances.* (1) Dependents allowances of $5 per week for each dependent in excess of two dependents, up to a maximum of $20 for six or more dependents shall be provided to participants receiving basic allowances or who would be receiving basic allowances were it not for adjustments which are permitted pursuant to paragraph (i) of this section. Participants eligible for dependents allowances from other sources shall not be precluded from receiving dependents allowances funded under the Act.

(2) Dependents allowances may be reduced pro rata only for absences without good cause. The methodology for making the reduction shall be described in the approved PSA.

(g) *Incentive allowances for persons receiving public assistance or who are in institutions.* (1) Incentive allowances, in the amount of $30 per week, in lieu of basic allowances, shall be paid to participants receiving public assistance, as defined in § 94.4, or whose needs or income are taken into account in determining such public assistance payments to others.

(i) Incentive allowances may be reduced pro rata only for absences without good cause. The methodology (e.g., daily or hourly proration) for making the reduction shall be described in the approved PSA.

(ii) Incentive allowances shall be disregarded in determining the amount of public assistance payments individuals are entitled to receive under Federal or federally assisted public assistance programs (sec. 111(a)).

(2) Incentive allowances, in lieu of basic allowances, but not in excess of such allowances, may be paid institutionalized persons, including prison inmates participating in program activities. The determination as to whether such allowance will be paid, and the amounts thereof, shall be made by the prime sponsor in consultation with officials of the institutions. In the case of prison inmates, all or part of such payments, as determined by the prime sponsor and the head of the institiution, may be held in reserve and delivered upon the participant's release from the institution.

(h) *Additional allowances.* Additional reasonable allowances may be paid to participants to cover extraordinary costs associated with participation in an activity. The circumstances in which additional allowances will be paid shall be described in the approved grant applicaiton.

(i) *Adjustments in allowances.* (1) The basic allowance shall be reduced, on a weekly basis, by the amount of unemployment compensation payments, if any, received by participants provided that such allowance is not reduced for any unemployment compensation received by an individual for a week or weeks prior to enrollment. If the unemployment compensation is paid on a bi-weekly basis, the compensation shall be prorated over the two weeks before the allowance is reduced.

(2) No basic allowance to which an individual may otherwise be entitled shall be diminished in any respect because of receipt of a separation payment provided under any collective bargaining agreement.

(3) The basic allowance may be adjusted upward to the degree that the local cost of living exceeds the national norm, if conditions for such increases are described in the approved grant application.

(4) Periodic increases to the basic allowance may be provided as an incentive to participation when such increases are described in the approved grant application.

(5) (i) The basic allowance may be reduced, at the option of the prime sponsor, on a weekly basis, by the total amount of any Basic Education Opportunity Grant (BEOG) entitlement which is received by the participant, during the period in which he/she is enrolled in the classroom training program, divided by the number of weeks in which the participant is enrolled in a classroom training program.

(ii) The prime sponsor may, however, make arrangements with the training institution to apply BEOG payments to tuition, books and related training costs normally funded by the prime sponsor. The prime sponsor should then pay the training institution the difference, if any, between the actual training costs and the BEOG. No BEOG adjustments to allowance payments shall be made when this procedure is used.

(6) The basic allowance may be reduced by the amount of wages received by classroom training participants who are concurrently enrolled during the same payment period in either full-time work experience, public service employment, or on-the-job training funded under the Act. The determination of whether the other activity is full-time shall be based on the number of hours that constitute full-time employment for regular employees similarly employed at the employing similarly employed at the employing agency or worksite.

(7) Incentive allowances for public assistance recipients may, at the option of the prime sponsor, be adjusted downward, provided that the adjustment shall not result in an incentive allowance payment at a rate less than the higher of the Federal, State, or local minimum wage multiplied by the number of hours of participation, which the trainee attends as required or is absent from for good cause.

(j) *Waivers of allowance payments.* (1) The payment of all or part of the basic allowance, described in paragraph (e) of this section, may be waived only in accordance with paragraphs (j) (2) or (3) of this section under the conditions described in the approved grant application or approved modifications to the grant.

(2) Waivers of basic allowance payments, as provided in paragraph (j)(1) of this section, shall be allowable only under the following conditions:

(i) That the waiver will be applied to the total enrollment in a course and will not be imposed on an individual basis, except as provided in paragraph (j)(3) of this section;

(ii) That the waiver will not have the effect of denying participation to individuals who could not participate without receipt of the allowances;

(iii) That the waiver will increase the number of individuals served;

(iv) That the waiver will otherwise promote the purposes of the Act; and

(v) That all participants for whom allowances are waived will be so notified in writing.

(3) In exceptional circumstances, individual waivers when described in the approved grant application or approved modifications to the grant, may be granted under the following conditions:

(i) The waiver is at the written agreement of the participant; and

(ii) Individual waivers may only be granted when all of the funds allocated in the Budget Information Summary for allowances have been obligated and training opportunities are still available and are unfilled.

(4) The dependents allowances described in paragraph (f) of this section

may not be waived, except in cases where the entire basic allowance is waived.

(5) Allowance payments may not be waived solely because a participant is a veteran and receives benefits through the Vietnam Era Veteran's Readjustment Assistance Act, as amended.

(6) Incentive allowances shall not be waived.

(k) *Repayments.* Prime sponsors shall require participants to repay the amount of any overpayment of allowances under this part, except if the overpayment was made in the absence of fault on the part of the participant, in which case repayment shall be waived where such recovery would be against equity and good conscience or would otherwise defeat the purposes of the program. Any overpayment not repaid may be set off against any future allowance or other benefits under the Act to which the participant may become entitled.

§ 95.35 Wages.

(a) Participants in public service employment programs shall be paid wages as required by Part 96 of these regulations.

(b) Participants in work experience shall be paid wages as required by § 95.33(d)(4)(viii).

(c) Participants in on-the-job training shall be compensated by the employer at such rates, including periodic increases, as are reasonable considering such factors as industry, geographical region, and trainee proficiency (sec. 111(b)). In no event shall the rate be less than the highest of the following:

(1) The minimum wage rate specified in Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. The exceptions to section 6(a)(1) shall not apply to on-the-job training participants, except as provided in paragraph (c);

(2) The State or local minimum wage for the most nearly comparable covered employment;

(3) The prevailing rates of pay for persons employed in similar occupations by the same employer; or

(4) The minimum entrance rate for inexperienced workers in the same occupation in the establishment or, if the occupation is new to the establishment, the prevailing entrance rate for the occupation among other establishments in the community or area, or, any minimum rate required by an applicable collective bargaining agreement.

(5) For participants on federally funded or federally assisted construction projects, the prevailing rate established by the Secretary, in accordance with the Davis-Bacon Act, as amended, when such rates are required by the Federal statute under which the assistance was provided.

(d) For hours spent in the production of goods or services, the rate of compensation to be paid to trainees by employers, public or private, shall be specified in a written agreement entered into by the training or employing facility and the prime sponsor. Where hours spent in production of goods or services are in positions covered by collective bargaining agreements, wages paid to trainees by the employer shall not conflict with the terms of the collective bargaining agreement.

(e) Wages in the Commonwealth of Puerto Rico, the Virgin Islands, and American Samoa shall be consistent with provisions of the Federal, State or local law, otherwise applicable. Wages in the Trust Territory of the Pacific Islands shall be consistent with local law, except on Enewetak Atoll and Kwajalein Atoll, where Section 6(a)(1) of the Fair Labor Standards Act applies.

§ 95.36 Minimum duration of training; reasonable expectation of employment.

(a) *Duration of training.* An individual shall not be referred for training in an occupation which requires less than 2 weeks of preemployment training unless there are immediate employment opportunities available in that occupation (sec. 703(8)).

(b) *Reasonable expectation of employment.* An individual shall not be referred to training unless the prime sponsor determines, after utilizing available and appropriate community resources, that there is a reasonable expectation of employment for such an individual in the occupation for which the person is being trained (sec. 703(10)).

§ 95.37 Training for lower wage industries; relocation of industries.

(a) No participant may be enrolled in any activity or service under this Act in any lower wage industry in jobs where prior skill or training is typically not a prerequisite to hiring and where labor turnover is high.

(b) Funds under this Act may not be used to assist in any relocation of an establishment from one area to another unless the Secretary determines that such relocation will not result in an increase in unemployment in the area of original location or any other area where it conducts business operations (sec. 704(a)).

§ 95.38 Cooperative relationships between prime sponsor and other manpower agencies.

(a) (1) Each prime sponsor shall, to the extent feasible, establish cooperative relationships or linkages with other manpower and manpower related agencies in the area within its jurisdiction, in particular, with agencies operating programs funded through the Department (sec. 105(a)(3)(D)). Prime sponsors are encouraged to utilize the free direct placement services offered the SESA's.

(2) Prime sponsors are required to establish cooperative linkages with SESA's in order to serve Federal Supplemental Benefit claimants and persons eligible under Title II of the Trade Act of 1974.

(b) Prime sponsors shall, to the extent feasible, notify the appropriate apprenticeship agency of training activities in apprenticeable occupations (sec. 105(a)(3)(D)).

(c) Any prime sponsor which intends to provide services under the Act to recipients of Aid to Families with Dependent Children (AFDC) should coordinate such services with the local sponsor of the Work Incentive Program, if any, to assure that the delivery of services under this Act is consistent with the WIN requirements. The provision of comprehensive manpower services to recipients of AFDC who are required to register for the WIN program may be affected by provisions of Title IV of the Social Security Act. Limitations on length of training, requirements to accept work in lieu of training, and other regulatory requirements may affect the AFDC recipient's participation in programs under the Act.

§ 95.39 Federal Supplemental Benefit claimants; beneficiaries under Title II of the Trade Act of 1974.

(a) (1) As outlined in the notice in the FEDERAL REGISTER (40 FR 49540) on October 22, 1975, each prime sponsor is responsible for entering into a cooperative agreement with the employment service in order to provide training and other opportunities, as appropriate, to FSB claimants.

(2) If an individual receiving FSB is enrolled in a classroom training program and subsequently defers his or her FSB payments, the prime sponsor may:

(i) Permit the individual to remain in the training opportunity which was developed per the cooperative agreement for an FSB recipient; however, the prime sponsor is not obligated to pay allowances in such an instance because the opportunity was developed on the basis that the individual was receiving FSB and would therefore, receive no or minimal allowances, or

(ii) Terminate the individual as he/she is filling a training opportunity created for FSB claimants but is not receiving FSB payments. Such an individual may reapply for participation as an applicant who is not in FSB status.

(b) Prime sponsors should, to the extent feasible, make training opportunities available to workers who have been adversely affected by United States trade policy and who have been found eligible under Title II of the Trade Act of 1974.

Subpart D—Special Grants to Governors

§ 95.50 General.

(a) Funds shall be allocated to each State through a special grant for the support of:

(1) Vocational education services for prime sponsors;

(2) The State Manpower Services Council; and

(3) State manpower services.

(b) Funds available under paragraph (a) shall be granted to each Governor in accordance with the formula allocation set out in § 95.2 of these regulations. Each Governor shall distribute these funds as provided in § 95.55 (secs. 103, 106, 107, and 112).

(c) Provisions generally applicable in Parts 94 through 99 of these regulations shall apply to special grants under this subpart unless otherwise provided.

§ 95.51 Distribution of funds.

(a) Five percent of the funds available under Title I of the Act shall be allocated to the Governors of the States to provide needed vocational education and services for prime sponsors through State Vocational Education Boards as set out in § 95.2. These services are to be provided to participants enrolled in Title I programs in prime sponsor areas.

(b) State Manpower Services Councils shall be supported with funds as set forth in § 95.2(b)(2).

(c) State manpower services provided under Section 106 of the Act shall be funded as set forth in § 95.2(c)(2).

§ 95.52 Grant application.

(a) (1) Upon notification by the Secretary of the amount of funds available for a special grant to the State, the Governor shall submit a Special Grant Application to the RA on a date set by the Secretary. Copies of all forms and instructions for the application for Special Grants are contained in the Forms Preparation Handbook.

(2) The Governor shall comply with the preapplication and comment and publication requirements specified in § 95.11 and § 95.15 (a), (b), (d), (e), and (f). In addition, the Governor shall provide 30 days prior to submission of the grant application for the purposes of commenting thereon:

(i) A summary of the grant application to each prime sponsor in the State and to units of general local government within the Balance-of-State with a population of at least 25,000;

(ii) A summary of the grant application to appropriate Indian prime sponsors and to labor organizations representing employees engaged in similar work in the same areas as that for which participants will receive subsidized employment or training; and

(iii) A summary of any programs to be funded within a prime sponsor's area with State Manpower Services funds to the prime sponsor in whose jurisdiction the program is to be funded.

(b) The Special Grant Application shall contain the following:

(1) *Approval Request Letter.*

(2) *Application for Federal Assistance.* Standard Form 424 as prescribed by FMC 74-7 is being used for the application for the special grant.

(3) *Special Grant Plan.* This plan consists of:

(i) *Special Grant-Program Planning Summary.* The Special Grant-Program Planning Summary is a multiprogram form providing for statistical entries on numbers of participants served by vocational education projects and State Manpower Services.

(ii) *Special Grant-Budget Information Summary.* The Special Grant-Budget Information Summary is a multiprogram form providing for entries on funds planned to be obligated and expended in vocational education projects, State Manpower Services Council, and State manpower services.

(iii) *Special Grant Program Narrative.* The narrative for the special grant will be composed of three separate sections. The Program Narrative form contained in the *Forms Preparation Handbook* requires a detailed statement on the program including the following items:

(A) *Vocational Education Services Program Narrative.* (*1*) An explanation of the method used to allocate funds to prime sponsor areas and the rationale for the method used;

(*2*) An explanation for any nonfinancial agreement which was not reached between a prime sponsor and Vocational Education Board;

(*3*) A summary of all agreements required in § 95.56 between individual prime sponsors and the State Vocational Education Board. The summary should follow the procedures established for the development of individual program narratives supporting each nonfinancial agreement;

(*4*) A copy of each such agreement. If all of the nonfinancial agreements are not available when the application is submitted, the Governor shall describe the training and services which he expects to be supplied by the State Vocational Education Board to each prime sponsor. Nonfinancial agreements received after the grant is made will be forwarded to the RA; and

(*5*) An explanation of administrative costs which exceed 20 percent.

(B) *State Manpower Services Council Program Narrative.* (*1*) A listing of members of the Council, identifying the group each member represents;

(*2*) Identification of the chairman.

(*3*) A statement of the procedures which will be followed in reviewing prime sponsor plans and plans of State agencies and making recommendations which will provide more effective overall coordination of manpower services in the State; including a discussion of how the Council functions, the location, frequency, and publicizing of meetings, and whether minutes are kept and meetings are open to the public;

(*4*) A description of the system to be used in monitoring other prime sponsors and State manpower services;

(*5*) A description of the types of data, materials, and information which will be included in the annual report to the Governor;

(*6*) If the Governor plans to use part of the funds authorized for the Council under Section 103(d) of the Act (one percent of the allocation) for Section 106 (State services), the specific use of the funds shall also be described including the amount of funds and objectives to be accomplished.

(*7*) A breakdown of staff and other council costs. This breakdown should include administration, wages, and fringe benefits.

(C) *State Manpower Services Program Narrative.* (*1*) Explanation of steps taken to assure cooperation of State agencies with prime sponsors in implementing the program;

(*2*) Description of State plan for sharing of manpower resources and facilities for most efficient and economical operation;

(*3*) Coordination of programs financed under Wagner-Peyser Act to provide assistance to individuals in accordance with policies of this Act;

(*4*) An explanation of the arrangements made by the State to assist the Secretary in carrying out the Secretary's mandatory responsibilities for enforcing the requirements for Federal contractors to list all suitable employment openings with local offices of the State employment service and to take affirmative action required in section 2012(a) of title 38, United States Code;

(*5*) A description of any arrangements for planning areas (see Part V of Attachment A, OMB Circular A-95) to serve geographical regions within the State;

(*6*) A description of provisions for coordination of the manpower and related services to be provided by the State in areas to be served by prime sponsors other than the State, including the exchange of information and coordination of manpower plans;

(*7*) A description of any of the activities allowable under Section 106(c) of the Act, that the State chooses to provide, detailing those activities to be undertaken and the costs and goals of such activities, including:

(*i*) A description of allowable services being delivered under the Act throughout the State, by State agencies responsible for employment, training, and related services (sec. 106(c)(1));

(*ii*) A description of special programs and services for rural areas outside major labor market areas (sec. 106(c)(2));

(*iii*) A description of the extent to which information will be developed and published regarding economic, industrial, and labor market conditions;

(*iv*) A description of information and technical assistance to be provided to prime sponsors in the State; and

(*v*) A description of any model training and employment programs.

(2) It meets the requirements of the Act, the regulations promulgated under the Act, other applicable law, and if the RA determines that the Governor has demonstrated maximum

efforts to meet the goals of the prior year's annual plan.

(c) Section 95.18(c) (1) and (2) applies to grants funded under Subpart D, of this Part 95.

(d) If an application is approved, the RA shall provide the Governor with a letter indicating approval.

§ 95.53 Application approval and disapproval.

(a) In reviewing the grant application, the RA shall utilize the standards specified in 95.17 (a) and (b) (1), (4), (7), (8), (9), (10), (11), (12), and (13).

(b) The RA shall approve any grant application which meets the following standards and requirements:

(1) It contains all the required forms, information, and certifications required by the regulations; and

(2) It meets the requirements of the Act, the regulations under the Act, other applicable law, and if the RA determines that the Governor has demonstrated maximum efforts to meet the goals of the prior year's Annual Plan.

(c) Section 95.18(c) (1) and (2) applies to grants funded under this subpart.

(d) If an application is approved the RA shall provide the Governor with a letter indicating approval.

(e) An application for a special grant shall be disapproved if it fails to meet any requirement of the Act, the regulations promulgated under the Act, or other applicable law. All other conditions set forth in § 95.19 shall apply to the disapproval of special grants.

(f) Upon approval, the Governor shall provide a summary of the Special Grant to each prime sponsor in the State.

[43 FR 16975, Apr. 21, 1978]

§ 95.54 Modifications.

(a) A major modification to a Governor's Special Grant Plan is required under any of the following conditions:

(1) Change in duration of the Plan;

(2) Change in the Plan allotment;

(3) Substantial change in program design and/or program goals defined as follows:

(i) When the cumulative number of individuals to be served or the planned placement terminations is to be increased or decreased by 15 percent or more.

(ii) When the cumulative transfer of funds among program activities or cost categories exceeds $50,000 or 15 percent of the total grant budget whichever is greater.

(iii) When the program design is altered significantly (see § 95.21(b)(1)(iii)(D)).

(b) A-95 Clearance. (1) Modifications require clearance through the A-95 clearinghouse only under the following conditions:

(i) There is a cumulative increase or decrease in funds equal to or more than 15 percent of the Plan allotment for the current program year and/or;

(ii) The term of the Plan is extended for a period of more than 3 calendar months and/or;

(iii) The RA directs that A-95 clearance is required for a particular modification.

(2) (i) When A-95 clearance is required, the Governor, whenever possible, shall provide notification to the appropriate A-95 State and areawide clearinghouses of its intent to modify its Plan 60 days prior to submission of the formal modification to the RA. The notification of intent should consist of a revised form SF 424 and a brief description of the anticipated modification. If within 30 days from submission of such notification, the Governor receives no notification from the A-95 clearinghouses that they wish to review the modification, the Governor has fulfilled its obligation under A-95 and may submit the modification to the RA without submitting it to the A-95 clearinghouses as specified in paragraph (b)(2)(ii) of this section.

(ii) When the Governor has not provided notification as specified in paragraph (b)(2)(i) of this section or when the Governor has provided this notification and the clearinghouse(s) have requested to review the completed modification, the Governor shall in all cases submit a copy of its modification to the clearinghouses for comment 30 days prior to its submission to the RA.

(iii) Where no comments have been received from A-95 clearinghouses or where the clearinghouses have not requested to review the completed modification, the Governor shall so indicate in the appropriate item on the revised SF 424, noting clearinghouses which sent no response after receiving the modification, and clearinghouses which did not request to review the completed modification after being notified of the Governor's intent to modify.

(c) The Governor may make any change, consistent with the regulations in this part and Part 98, in its Program Planning Summary, Budget Information Summary, or narrative description which is not set out in paragraph (a) of this section without prior approval, but must show any such change in the First Program Status Summary and Financial Status Report, as appropriate, submitted to the Department after the change has been made. At the same time this report is submitted, an updated Program Planning Summary, Budget Information Summary, or narrative description, as appropriate, shall also be submitted to the RA. Only those lines and columns or portions of the narrative affected by the modification need be submitted. Comments and publication requirements do not apply to changes described in this paragraph (c) of this section.

(d) Special Grant Plan modifications shall not be initiated solely to adjust planned performance to meet actual performance.

(e) Format. Modifications pursuant to paragraphs (a) and (b) of this section shall consist of the following:

(1) Approval Request Letter.

(2) Revised Form SF 424 (if A-95 clearance is required).

(3) Revised Special Grant Program Planning Summary and Budget Information Summary for current and future quarters only; except that a modification not involving a change in the grant allotment must be received in the regional office within 30 days of the beginning of the current quarter in order to include changes to the current quarter goals.

(4) Narrative description of the changes made and certification that the review and comment procedures in paragraph (f) have been complied with.

(5) A copy of the newspaper announcement required in paragraph (f) of this section.

(6) Revised portions of the narrative description, if appropriate.

(f) Publication and Comment. (1) No later than the date of submission to the RA, the Governor shall provide a summary of any modification pursuant to paragraphs (a) and (b) of this section to each prime sponsor in the State and units of general local government within the Balance of State with a population of at least 25,000, to appropriate Indian sponsors, and to labor organizations representing employees engaged in similar work in the same area as that for which participants will receive subsidized employment or training; and the Governor shall publish in a minimum of one issue of a newspaper or newspapers (including minority newspaper(s), where feasible) of general circulation throughout the area to be served a notice of the intent to request a modification, a brief summary of the purpose of the proposed modification, and the location and hours when the complete modification can be reviewed and the phone number where questions and comments may be directed.

(2) Comments pursuant to paragraphs (b)(2)(ii) and (f)(1) of this section shall be made to the Governor and the RA within 30 days of publication. All substantive written comments and responses shall be transmitted to the RA with the modification, unless comments are received after the modification's submission, in which case they shall be sent separately to the RA.

(3) The Governor shall acknowledge any written comment made pursuant to this section, and shall inform any party submitting a substantive written comment of whether any plan revision will be made in response to the comment and the reasons for such determination.

(g) Notification of Action. (1) The RA shall take final action on approval or disapproval of any proposed modification within 30 days of receipt. Within 7 days after taking action, the RA shall notify the Governor of the action.

(2) A denial of a Governor's request for a modification shall be subject to the appeal procedures set out in Part 98 of this section.

(3) The procedures in § 95.18(c) (1) and (2) shall apply to modifications under paragraph (b) of this section.

(h) The procedures for incremental funding are the same as those specified in § 95.21 of Subpart A.

§ 95.55 Governor's distribution of vocational educational funds.

(a) Upon notification of the funds available to the State for vocational education, the Governor shall inform in writing the State Vocational Education Board and each prime sponsor of the amount of funds available to be spent in each prime sponsor's area and the methodology used to determine that amount. If a prime sponsor elects not to use all or part of the funds provided for its area, it shall notify the Governor who will redistribute the funds among other eligible prime sponsors.

(b) The Governor shall determine the amount of funds to be made available in each prime sponsor's area assuring that such funds do not increase by more than 20 percent the amount of funds available to that prime sponsor's area under the basic allocation formula set out in § 95.2(b) (sec. 103(c)).

§ 95.56 Program operations.

(a) *Vocational education services and activities.* (1) The Governor shall provide vocational education funds received by special grant to the State Vocational Education Board as described in § 95.55 of this Subpart D. The State Vocational Education Board will then provide the training and services detailed in a nonfinancial agreement with the prime sponsor as described in § 95.58 of this Subpart D. This agreement will be developed at the local level between prime sponsors and the State Vocational Education Board to provide vocational education and services which are consistent with provisions of the prime sponsors' comprehensive plan to participants enrolled in Title I programs in prime sponsor areas. This agreement will then be forwarded to the Governor, to become part of the special grant application which shall be submitted to the RA.

(2)(i) Vocational education services which may be provided by a State Vocational Education Board include, but are not limited to, basic or general education, educational programs conducted for offenders, institutional training, and supportive services as defined in § 95.33(d)(5) or as authorized as supportive services in vocational education programs administered by a State Vocational Education Board. The services provided must be consistent with the provisions of the Act and regulations. Vocational education funds allocated under this Subpart D may also be utilized, as appropriate, for the payment of allowances to participants in vocational education training and for administrative costs incurred for the vocational education programs funded under the Act.

(ii) Vocational education funds allocated under this Subpart D shall not be used for activities to be carried out with the State manpower services funds or by the State Manpower Services Council.

(3) If no Vocational Education Board exists within a State, the Governor may provide financial assistance to an alternate agency which serves the same purpose as a State Vocational Education Board.

(b) *State Manpower Services Council.* (1) The Governor shall, from funds available under § 95.2(b)(2), provide staff and other necessary services in support of the Manpower Services Council in performing its functions under § 95.13(d).

(2) Funds for State Manpower Services Councils may be used for State manpower services to the extent such funds are not needed for this council.

(c) *State manpower services.* Funds provided under § 95.2(c)(2) of these regulations are to be used for the following:

(1) Activities required to be performed by the State (sec. 106(b)) are as follows:

(i) Assurance that the State agencies providing manpower and manpower-related services either independently or as subgrantees or contractors will cooperate with prime sponsors and eligible applicants in implementation of the program.

(ii) Development of methods for the sharing of resources and facilities in order to carry out manpower programs throughout the State. The administration of such programs will be designed to meet the needs of the area with minimum duplication and in the most efficient and economical manner.

(iii) Coordination of programs financed under the Wagner-Peyser Act in accordance with such rules, regulations, and guidelines as the Secretary determines necessary for the purpose of providing coordinated and comprehensive assistance to those individuals requiring manpower and manpower-related services to achieve their full occupational potential in accordance with the policies of the Act;

(iv) Arrangements made by the State to assist the Secretary in carrying out his responsibilities for enforcing the requirements for Federal contractors to list all suitable employment openings with local offices of the State employment service and take affirmative action, as required in section 2012(a) of Title 38, United States Code. Such arrangements shall be explained in the State grant application and shall relate only to Federal contractors and subcontractors and should not be interpreted to include grantees, subgrantees or contractors under the Act (sec. 106(b)(5)).

(v) Arrangements for any planning areas (see Part V of Attachment A, OMB Circular A-95) to service geographical regions within the State, including a description of the roles and responsibilities of the planning area with particular emphasis on the steps taken to assure that plans of all State agencies for delivery of services have been effectively coordinated.

(vi) Coordination of the manpower and related services to be provided by the State in areas to be serviced by prime sponsors other than the State, and that provision has been made for the establishment of mechanisms to (A) provide for the exchange of information between States and local governments on State, intrastate, and regional planning in areas such as economic development, human resource development, education, and such other areas that may be relevant to manpower planning; and (B) promote the coordination of all manpower plans in a State so as to eliminate conflict, duplication, and overlapping between manpower services under the Act and manpower services provided under other statutory authority.

(2) Activities which may be provided at the option of the State (sec. 106(c)) are as follows:

(i) Provision of allowable services under the Act which are being delivered throughout the State by State agencies responsible for employment and training and related services;

(ii) The provision of financial assistance for special programs and services designed to meet the needs of rural areas outside major labor market areas;

(iii) Development and publication of information regarding economic, industrial, and labor market conditions, including but not limited to job opportunities and skill requirements, labor supply in various skills, occupations, and economic and business development and location trends;

(iv) Provision, without reimbursement and upon request, to any prime sponsor serving an area within the State, of such information and technical assistance to assist any such prime sponsor in developing and implementing its programs under the Act; and

(v) Development of special model training and employment programs and related services, including programs for offenders similar to programs described in Section 301(c) of this Act.

(3) When using funds provided under § 95.2(c)(2) for manpower activities (e.g., work experience, classroom training, public service employment), the requirements of Subpart C of Part 95, and of Part 96, as appropriate, apply.

§ 95.57 Funding; grant administration.

(a) *Funding.* Special grants will be funded in the same way as basic grants under this Part 95.

(b) *Grant administration.* The requirements related to grant administration contained in Part 98 are applicable to special grants to Governors, except as provided in Subpart D of Part 95.

(1) The overall 20 percent limitation on funds used for administration as set out in § 98.12(f)(6) shall not apply to the special grant.

(i) Funds provided for vocational education services through the special grant are subject to the provisions of the 20 percent limitation on use of funds § 98.12(f)(6). At least fifty percent (50%) of the vocational education funds allocated to administration shall be made available to local prime sponsor areas unless adequate justification for not doing so is provided to the RA by the Governor.

(ii) There is no administrative cost limitation on funds for State Manpower Services Councils or State manpower services.

(2) When funds for vocational education services are used for the payment of allowances to participants, the method of payment utilized must be that of the prime sponsor whose participants are receiving such allowances.

(i) Where the prime sponsor has an established delivery system for the payment of allowances pursuant to § 95.34, the State Vocational Education Board shall utilize the agency or agencies administering that system.

(ii) Where the prime sponsor has no allowance payment delivery system, the method of payment shall be developed between the prime sponsor and the State Vocational Education Board, subject to the requirements of § 95.34.

(c) *Reports for special grants.* (1) The following reports are required:

(i) A Special Grant-Program Status Summary.

(ii) A Special Grant-Financial Status Report.

(iii) A Quarterly Summary of Participant Characteristics (QSPC). The QSPC shall be required for participants provided Vocational Education services and in instances where the State Manpower Services funds are utilized to fund training and employment opportunities. The prime sponsor shall submit a QSPC on its Title I participants receiving Vocational Education services to the Governor so that a summary QSPC can be compiled. The Governor shall make arrangements to insure that local agencies responsible for intake of any participants receiving employment and training opportunities funded under § 95.2(c)(2) supply the data required by the QSPC to the Governor so that a summary QSPC can be completed.

(2) The Governor shall supply to each prime sponsor to which vocational education services are provided a Special Grant Program Status Summary and a Special Grant Financial Status Report for funds expended in the sponsor's area, and shall submit a summary Special Grant-Program Status Summary and a Special Grant-Financial Status Report with copies of the individual prime sponsor reports attached to the RA.

(3) Each of the three reports shall be submitted to the RA no later than 30 days after the end of the reporting period. If a Governor's period ends at a date other than the Federal fiscal year quarter, a fifth set of reports, covering the entire grant period will be required. Instruction for completion of these reports are in the *Forms Preparation Handbook.*

§ 95.58 Nonfinancial agreement between prime sponsor and State Vocational Education Board.

(a) (1) Upon notification of the funds available for its area, the prime sponsor shall develop a financial, statistical, and narrative plan for the expenditure of such funds by the Vocational Education Board in the prime sponsor's area. This plan shall be developed in conjunction with the Vocational Education Board consistent with the prime sponsor's Comprehensive Manpower Plan. The plan will be signed by both the prime sponsor and the Board and when signed, will constitute a nonfinancial agreement.

(2) (i) If, within 90 days after notification of available funds for the area has been provided, the prime sponsor and the Board are unable to reach an agreement, the Governor shall mediate the dispute, with the intent of insuring that the local vocational education needs of the prime sponsor's area are met. The Governor retains the authority to determine, in consultation with the prime sponsor, the purposes

for which the funds should be used. If mediation by the Governor does not result in a solution acceptable to both parties, it is incumbent upon the Governor to take action necessary to expeditiously and properly utilize those funds, including making other arrangements to insure that the prime sponsor's area is served or if such arrangements cannot be made, the Governor may then redistribute the funds to another prime sponsor area. The affected parties shall be informed prior to any action taken by the Governor.

(ii) If, within 120 days after notification of available funds for the area has been provided, the nonfinancial agreement still has not been finalized, the RA shall arbitrate the dispute.

(b) The Vocational Education Board shall provide services to the prime sponsor upon receipt of the necessary funds from the Governor. The nonfinancial agreement will consist of the following four sections:

(1) Prime sponsor vocational education nonfinancial agreement signature sheet;

(2) Part I of the Special Grant-Program Planning Summary;

(3) Appropriate columns of the Special Grant-Budget Information Summary;

(4) Vocational education program narrative, which shall include the identification of the potential recipient(s) of the funds specified in § 95.57(b)(1)(i) for program administration.

(c) After the agreement is signed, a copy will be sent to the Governor for his review and approval.

(d) The Governor shall develop procedures for the prime sponsors and the Vocational Education Board to follow when they desire to modify the nonfinancial agreement.

(e) The Governor shall develop procedures to assure that the Vocational Education Board provides services consistent with the Governor's Special Grant plan for vocational education services and the nonfinancial agreements between the Board and the prime sponsors.

§ 95.59 Coordination with prime sponsor.

(a) The financial and statistical information from the approved Nonfinancial Agreement Program Planning Summary and Budget Information Summary will be entered into the relevant columns of the prime sponsor's basic grant Program Planning Summary and Budget Information Summary as provided in the *Forms Preparation Handbook.* If the Comprehensive Manpower grant has been signed prior to final approval of the Vocational Education Agreement, a modified prime sponsor's grant Program Planning Summary and Budget Information Summary will be submitted when the vocational education information is available.

(b) Information provided by the Vocational Education Program Status Report and Financial Status Report, supplied to the prime sponsor from the Governors, will be entered in the prime sponsor's basic grant Program Status Report and Financial Status Report.

PART 96—PROGRAMS UNDER TITLE II OF THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

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AUTHORITY: Comprehensive Employment and Training Act of 1973, as amended (Pub. L. 93-203, 87 Stat. 839; Pub. L. 93-567, 88 Stat. 1845), sec. 702(a), unless otherwise noted.

SOURCE: 42 FR 55752, Oct. 18, 1977, unless otherwise noted.

Subpart A—General

§ 96.1 Scope and purpose.

(a) This part contains the Department of Labor's regulations providing for the establishment and operation of public service employment programs, and other manpower programs, under Title II of the Act.

(b) Provisions for Title II programs for Indian tribes on Federal and State reservations are found in Subpart D of this Part 96. The provisions of Subparts A, B, and C apply only to non-Indian eligible applicants except as otherwise noted in Subpart D.

(c) Definitions for every abbreviation and major term may be found in Part 94 of these regulations.

(d) Statutory authority for the regulations contained in this Part 96 may be found in section 702(a) of the Act, as well as in other substantive provisions of the Act. Applicable statutory provisions, other than section 702(a) are noted generally in these regulations.

(e) The regulations in this part govern programs funded under the Comprehensive Employment and Training Act of 1973 prior to amendment and reauthorization in 1978 (Pub. L. 95-524, 92 Stat. 1909), and are thus in many particulars superseded by regulations implementing the reauthorized Comprehensive Employment and Training Act, Pub. Law 95-524, 92 Stat. 1909, which are being codified at 20 CFR Parts 675 *et seq.* Any questions regarding the applicability of any particular regulation in Title 29 should be addressed to the Regional Administrator for the Employment and Training Administration.

[42 FR 55752, Oct. 18, 1977, as amended at 44 FR 37911, June 29, 1979]

§ 96.2 Allocation of funds.

(a) Funds appropriated under Title II of the Act are available only for areas of substantial unemployment and may be allocated by the Secretary only to eligible applicants (secs. 204(a) and 204(c)).

(b) (1) At least 80 percent of the funds available under Title II shall be allocated among eligible applicants in accordance with a ratio comparing the number of unemployed persons residing in areas of substantial unemployment within each eligible applicant's jurisdiction to the number of unemployed persons residing in all areas of substantial unemployment (sec. 202(a)).

(2) Funds not allocated as provided in paragraph (b)(1) of this section, may be distributed by the Secretary at his discretion taking into account the severity of unemployment in such areas and may include additional areas of substantial unemployment designated by the Secretary after the fiscal year allocation of Title II funds (sec. 202(b)).

(i) When any portion of these funds is to be allocated using a distribution based upon a formula, the Secretary shall not later than 30 days prior to such allocation publish for comment in the FEDERAL REGISTER the specific formula for such distribution, the rationale behind the selection of the formula and the proposed amount for distribution to each eligible applicant. After consideration of comments received, the Secretary shall publish final allocations (sec. 202(c)).

(c) Except as provided in § 96.36(c), an eligible applicant shall distribute to a program agent through a formal subgrant agreement those funds that are allotted to the eligible applicant under the formula specified in paragraph (b)(1) for use within the program agent's jurisdiction unless the program agent declines to operate a program under Title II of the Act, in which case, the eligible applicant will make other arrangements to serve that jurisdiction (sec. 204(d)(1)).

§ 96.3 Eligibility for funds.

(a) Funds shall be allocated by the Secretary only to eligible applicants. Eligible applicants are those prime sponsors and Indian tribes on Federal or State reservations, as defined in § 94.4, which include areas of substantial unemployment (sec. 204(a)).

(b) For the purpose of allocating funds, the term "eligible applicant" shall include any entity which is eligible to be a prime sponsor under Title I of the Act and Indian tribes on Federal or State reservations as described in § 96.42 (sec. 204(b)).

(c) A State shall not qualify as an eligible applicant for any geographical area within the jurisdiction of any other eligible applicant within the State unless the non-State eligible applicant has not submitted an approvable application for Title II funds (secs. 204(a)(1) and 102(b)(1)).

(d) A unit of general local government shall not qualify as an eligible applicant with respect to any area within the jurisdiction of another eligible unit of general local government unless such smaller unit has not submitted an approvable application for such areas (secs. 204(b) and 102(a)(b)(2)).

(e) (1) Eligible applicants shall distribute funds to program agents, as provided in § 96.2(c) (sec. 204(d)(1)).

(2) (i) No program agent shall receive or continue to receive funds for any area of substantial unemployment within the jurisdiction of another program agent unless the RA determines that the smaller program agent has not carried out its administrative responsibility for developing, funding, overseeing, and monitoring programs within its area, consistent with the application for financial assistance developed by the eligible applicant in cooperation with the program agent (secs. 204(d)(3) and 102(b)(2)).

(ii) No eligible applicant may make other arrangements, as specified in § 96.22(d), for serving an area of substantial unemployment being served by a program agent, which the eligible applicant determines is not carrying out its administrative responsibility for developing, funding, overseeing, and monitoring programs within its area, consistent with the application for financial assistance developed by the eligible applicant in cooperation with the program agent, except with the review and the concurrence of the RA (sec. 204(d)(2)).

(f) (1) An eligible applicant or program agent, other than a State, whose entire jurisdiction qualifies as an area of substantial unemployment shall, to the extent feasible, allocate funds for identifiable subareas which meet the unemployment rate requirement of areas of substantial unemployment in § 94.4. Such allocation to subareas shall be based on the ratio of the number of unemployed persons residing in each subarea to the total number of unemployed persons within the eligible applicant or program agent's jurisdiction.

(2) Where the eligible applicant is a State that has an unemployment rate for its jurisdiction of at least 6.5 percent, the State shall, to the extent feasible, allocate its funds under Title II to individual areas of substantial unemployment within its jurisdiction. Such allocations shall be based on the ratio of the number of unemployed persons residing in each individual area of substantial unemployment to the sum of unemployed persons residing in all such areas of substantial unemployment within the State's jurisdiction.

(3) An eligible applicant or program agent with an overall unemployment rate of less than 6.5 percent shall allocate its funds only for those areas of substantial unemployment specified by the Secretary (secs. 201 and 202(a)).

(g) If an eligible applicant finds that there is an area of substantial unemployment within its jurisdiction that has not been designated by the Secretary to receive assistance, it may recommend that such area be considered for assistance by the Secretary. In making any such recommendation, the eligible applicant must include a precise geographical definition of the area to the served and its population. Such a recommendation shall be submitted to the RA. The Secretary shall, within a reasonable time, make a determination on the recommendation and inform the eligible applicant of the determination and the reasons therefor.

Subpart B—Grant Application

§ 96.10 General.

This Subpart B provides the procedures for obtaining grants to operate programs under Title II of the Act.

§ 96.11 Preapplication for Federal Assistance; consortium agreements.

Potentially eligible applicants, including consortia formed under § 95.11 of these regulations, shall be notified of their eligibility to apply for grants under Title II. At that time such applicants shall submit a preapplication following the procedures set forth in § 95.11(a) of this title.

§ 96.12 Eligible applicant designation.

Upon receipt of a completed preapplication the RA shall determine whether the applicant is eligible to operate a program under Title II of the Act. The RA shall notify the applicant of the determination according to the procedures set forth in § 95.12 of this title.

§ 96.13 Planning process; advisory councils.

To receive financial assistance under Title II of the Act, eligible applicants shall submit an approvable Title II Annual Plan as set out in § 96.14. In developing and modifying such a plan, an eligible applicant shall utilize the planning process and the advisory councils as set out in § 95.13 (b), (c), (d) and (e) of this title.

§ 96.14 Content and description of grant application.

(a) *General.* (1) This section describes the grant application for funds under Title II of the Act. Copies of all forms and instructions are contained in the *Forms Preparation Handbook.*

(b) An Annual Plan for Title II must be submitted by prime sponsors on a date set by the Secretary. The Annual Plan consists of the following:

(1) *Application for Federal Assistance.* This form is described in § 95.14(c)(1).

(2) *Annual Narrative Description of Program.* The annual narrative description requirements for Title II are the same as those described in § 95.14(c)(2) for Title I programs. A detailed statement on each of those items must be provided as part of the Title II Annual Plan, except as provided below:

(i) The information required under § 95.14(c)(2)(iii)(A), program activities and services, shall only be provided if the Title II applicant intends to conduct Title I activities with Title II funds.

(ii) If the Title II applicant's geographical area differs from the Title I geographical area described in the PSA, the information required under geographical area to be served, as specified in § 95.14(b)(2)(ii) shall be provided for the Title II area.

(3) *Program Planning Summary.* This form is described in § 95.14(c)(3).

(4) *Budget Information Summary.* This form is described in § 95.14(c)(4).

(5) *Public Service Employment Occupational Summary.* This form is described in § 95.14(c)(5).

(6) *Monthly Schedule.* A monthly estimate of total individuals enrolled at the end of the month and total cumulative expenditures shall be provided. Such monthly schedule will reflect the activity for each month during the grant period under Title II.

(7) *Program Summary.* The Program Summary presents a distribution of jobs, training slots, and funds to be provided to eligible applicants and subgrantees. It designates the area to be served, the population and employing agencies of each area.

§ 96.15 Comment and publication procedures relating to submission of grant application.

Each eligible applicant shall provide an opportunity for comment on the application as set out in § 95.15 of this title.

§ 96.16 Submission of grant application; standards for reviewing grant applications.

(a) Each eligible applicant shall submit its grant application to the RA on or before a date set by the Secretary.

(b) A grant application shall include all items set out in § 96.14 of this Part 96.

(c) A grant application will be reviewed to determine if it meets the requirements of the Act, the regulations promulgated under the Act, and other applicable law. In reviewing a grant application, the RA shall use the standards set forth in § 95.17(b) of this title.

§ 96.17 Application approval; application disapproval; grant agreement.

The procedures set forth in § 95.18 and § 95.19 shall apply for Title II applications and grant agreements.

§ 96.18 Use of alternative eligible applicant; services by the Secretary.

The provisions detailed in § 95.20 shall apply to applications and grants made pursuant to Title II of the Act.

§ 96.19 Modifications.

The modification procedures set forth in § 95.21 of this title shall apply to Title II grants. In addition, modifications pursuant to § 95.21(b) (1) and (3) of this title shall include a revised program summary, if appropriate.

Subpart C—Program Operation

§ 96.20 General.

This Subpart C sets out the program operation requirements for eligible applicants and subgrantees. The utilization of funds under Title II of the Act is conditioned upon adherence to the requirements of the Act, other applicable law, and other terms and conditions of the regulations promulgated in this part.

§ 96.21 Basic responsibilities of eligible applicants.

An eligible applicant is responsible for:

(a) Requesting, receiving and administering funds within its jurisdiction (secs. 203(a) and 205(c)(1));

(b) Allocating funds and jobs equitably among public agencies within its jurisdiction (sec. 205(c)(23));

(c) Developing a plan to effectively implement a program of transitional public service employment and related training and manpower services (sec. 203(a));

(d) Developing, to the greatest extent possible, new careers and opportunities for career advancement for participants (sec. 205(c)(4));

(e) Performing reviews at 6-month intervals on the status of each participant to assure that the participant's job has potential for advancement or suitable continued employment (sec. 207(a));

(f) Administering or supervising all activities under its approved plan including the establishment of hearing procedures, as set out in Part 98 of this title (sec. 205(c)(1));

(g) Undertaking analysis of job descriptions and reevaluations and, where shown necessary, revisions of qualification requirements at all levels of employment, including recommendations to State or local civil service commissions on needed revisions in civil service requirements and practices relating thereto, with a view toward removing artificial barriers to public employment of those whom it is the purpose of Title II to assist, as specified in §§ 96.27, 96.28, 96.29, and 96.30 (205(c)(18)).

(h) Assuring that employing agencies provide information regarding their employment opportunities funded under the Act to the local State employment service and that such vacancies are filled, as specified in § 96.30(a).

(i) Requiring that all employing agencies maintain and make available for review by all interested parties job descriptions on all PSE positions.

§ 96.22 Basic responsibilities of program agents; relationship with eligible applicants.

(a) A program agent, as defined in § 94.4, shall be delegated by the eligible applicant through a formal subgrant agreement the administrative responsibility for developing, funding, overseeing and monitoring programs with respect to the funds made available to it under Title II of the Act.

(b) A program agent shall carry out its functions consistent with the grant application developed by the eligible applicant in cooperation with the program agent and shall be responsible to the eligible applicant for carrying out its program in a manner consistent with the application (sec. 204(d)(2)).

(c) Unreconciled differences between an eligible applicant and a program agent shall be submitted to the RA.

(d) If a program agent fails to comply with paragraph (b) of this section, it is the responsibility of the eligible applicant, consistent with the regulations, to initiate whatever action is necessary to assure program agent compliance. Such action may include the eligible applicant reallocating funds to an alternative program agent to serve the original area or deciding to serve the area itself. However, no such action shall be taken by an eligible applicant except with the review and concurrence of the RA.

§ 96.23 Acceptable public employment positions.

(a) Funds provided under Title II which are used for public service employment shall only be used to fund public service needs which have not been met and to implement new public services (sec. 201).

(b) In developing job opportunities under this Part 96 the following requirements shall apply:

(1) The job provided must meet public service needs as defined in the Act and the regulations promulgated in this Part 96 (sec. 205(a));

(2) Program emphasis shall be on transitional employment: jobs which are likely to lead to regular, unsubsidized employment or opportunities for continued training (secs. 201, 205 (b)(4), (b)(6), (b)(11), and 205(c)(26)).

(3) Jobs shall be provided, to the extent feasible, in occupational fields which are most likely to expand within the public or private sector as the unemployment rate recedes (sec. 205(c)(6));

(4) Jobs shall be allocated among State and local public agencies and subdivisions thereof, such as educational agencies, within the applicant's jurisdiction, taking into account the number of unemployed persons within each area, their needs and skill levels, the needs of the agencies and the ratio of jobs in the area at each governmental level. The eligible applicant has the ultimate responsibility for determining the equitable distribution and for selection, job structure, participant benefits, and all other aspects of the jobs funded under this part (sec. 205(c)(23)).

(5) To the extent consistent with the maintenance of effort requirements of § 96.24, the participant activity limitations of § 98.23 and with personnel procedures and collective bargaining agreements of the eligible applicant and the private nonprofit agencies, jobs may also be allocated to private nonprofit agencies, such as educational, social service and health agencies, which provide public services, as de-

fined in § 94.4, within an eligible applicant's jurisdiction. Jobs may be allocated to such agencies provided: they offer public services for the general public and not primarily or exclusively for the benefit of their membership or constituencies; and they are determined to best serve the unemployed population based on the considerations stated in § 96.23(b)(4). Such jobs may include positions in Job Corps Centers other than those operated by private for profit organizations.

(6) To the extent consistent with the maintenance of effort requirements of § 96.24, Title II participants may be outstationed at worksites, including Federal agencies, such as Job Corps Civilian Conservation Centers and private nonprofit agencies: *Provided*, The employment is geared to the skills and abilities of the participant and is consistent with these regulations. Outstationed participants are still to be considered employees of the employing agency and shall be assured of the same working conditions and benefits, as specified by section 98.24, as received by other similarly employed employees of the employing agency (not of the outstationed worksite). However, maximum efforts should be made by the employing agency to accommodate the outstationed worksite by coordinating work hours and holidays.

(7) Jobs may be located only within the eligible applicant's or program agent's jurisdiction unless the eligible applicant or program agent determines that the effective operation of its program under Title II is possible only by creation of some jobs outside of its jurisdiction. In such cases, the jobs created must employ residents of the eligible applicant's or program agent's jurisdiction and be within reasonable commuting distance of the residents of the eligible applicant's or program agent's jurisdiction.

(8) Jobs will not be "deadend," but will contribute to career advancement and the development of the employment potential of participants. Opportunities for continued training are to be provided to support the upward mobility of participants (secs. 205(a), 205(c)(4), and 208(a)(6)).

(9) No more than one-third of the participants in any program may be employed in a bona fide professional capacity as defined in 29 CFR 541.3 issued pursuant to section 13(a)(1) of the Fair Labor Standards Act of 1938, as amended. The exception to this limitation is the hiring of classroom teachers. (Generally, according to the F.L.S.A., a professional is an individual (i) with a professional education, usually requiring more education than a Bachelor's degree or whose work is original and creative in an artistic field, (ii) at least 80 percent of whose work requires discretion and judgment and is intellectual in nature, and (iii) who earns at least $170 a week ($150 in Puerto Rico, Virgin Islands, or American Samoa). A less stringent test applies to individuals earning $250 or more a week. Lawyers, doctors and teachers working as such are professional without regard to their earnings (for further explanation see 29 CFR 541.3) (sec. 205(c)(22)).

(10) The program excludes employment in building and highway construction work (except that which is normally performed by the prime sponsor or eligible applicant) and other work which inures primarily to the benefit of a private profitmaking organization.

(11) Jobs in each promotional line shall in no way infringe upon the promotional opportunities which would otherwise be available to persons currently employed in public service jobs not subsidized under Title II. In accordance with § 98.24(b), when a promotional freeze affects non-CETA employees, it shall also apply to CETA participants similarly employed (sec. 205(c)(24));

(12) No job will be filled in other than an entry level position in each promotional line until applicable personnel procedures and collective bargaining procedures have been complied with (sec. 205(c)(24));

(13) To the extent feasible, the public services provided by the jobs should be designed to serve the residents of the areas of substantial unemployment designated for Title II funds (sec. 205(c)(3)); and

(14) Part-time jobs shall be allowed only for those individuals who, be-

cause of age, handicap, or other personal factors, are unable to work full-time.

(15) Consistent with the requirements of § 98.12(b)(3), of this subtitle, public service employment participants may be used in home repair and winterization/weatherization activities.

§ 96.24 Maintenance of effort.

(a) Public Service Employment funded under the Act shall only be in addition to employment which would otherwise be financed by the eligible applicant without assistance under this Act (sec. 205(c)(25)).

(b) To assure maintenance of effort, a public service employment program under the Act:

(1) Shall result in an increase in employment opportunities over those which would otherwise be available;

(2) Shall not result in the displacement of currently employed workers, including partial displacement such as a reduction in hours of non-overtime work, wages, or employment benefits;

(3) Shall not impair existing contracts for service or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed; and

(4) Shall not substitute public service jobs for existing federally assisted jobs (sec. 208(a)(1)).

(c) Eligible applicants, program agents, contractors and subgrantees may not terminate, layoff, or reduce the working hours of, an employee in anticipation of hiring an individual with funds available under the Act. In addition, no participant shall be used to fill positions or provide services normally provided by temporary, part-time, or seasonal workers or contracted out, or to fill full-time vacancies, unless documentation is maintained, as provided in paragraph (j) of this section, that such action does not constitute a substitution of Federal funds for purposes that would otherwise have been supported by other resources.

(d) These regulations do not authorize the hiring of any person when any other person is on lay-off from the same or any substantially equivalent job (sec. 205(c)(7)(8)). If lay-offs of regular employees occur during the grant period, participants may not remain working in the same or substantially equivalent job within the employing agency that is affected by the lay-off. Under these circumstances, the participants would either be transferred to positions not affected or be laid off or terminated. Prime sponsors shall try to transfer CETA participants to non-affected positions, transfer them to Title I, if appropriate, or attempt to place them into unsubsidized employment before laying them off or terminating them (sec. 205(c)(8)).

(e) The hiring of former employees who lost their jobs due to bona fide lay-off into positions supported under the Act is not prohibited if it does not constitute a violation of the maintenance of effort provisions of the Act and these regulations.

(1) The percentage of public service employment positions which may be used for the hiring of laid-off employees shall be reasonably consistent with that percentage of the total unemployed population in the jurisdiction which the laid-off employees comprise. In determining the reasonable percentage of positions to be made available for rehiring laid-off employees, eligible applicants shall assess the appropriateness of serving such persons by considering the following factors:

(i) The needs of the laid-off workers relative to the needs of other groups specified in the Act for special consideration, as well as the groups identified as significant segments by the prime sponsor in its grant application, including length of unemployment and prospects of obtaining employment.

(ii) The size of the public service employment program and the availability of funds to support rehires without disruption of services to, or termination of, regular participants.

(2) Eligible applicants shall document such assessment of equitability and need in the Annual Plan Narrative Description. RA's shall approve the rehire of laid-off employees only upon determining that the maintenance of effort provisions of the Act and these regulations have not been violated and

that sufficient justification of equitability and need has been provided.

(f) (1) In most jurisdictions where an eligible applicant lays off some of its employees, the total number of individuals laid off by the eligible applicant constitutes less than ten percent of unemployed persons in the eligible applicant's jurisdiction. In such jurisdictions, an eligible applicant may, consistent with the requirements of paragraph (e) of this section, allocate up to ten percent of its Public Service Employment positions for the rehiring of such laid-off employees, even if the number of laid-off employees is less than ten percent of the total unemployed population in the jurisdiction.

(2) Any eligible applicant which is subject to the ten percent limitation of subparagraph (1), may submit a major modification to the Regional Administrator requesting that the eligible applicant be permitted to allot more than ten percent of the eligible applicant's Public Service Employment positions to the rehiring of its laid-off employees. The major modification shall be supported by necessary documentation and shall demonstrate that approval of the request would further the purposes and policies of the Act, including the provision of special consideration to the most severely disadvantaged individuals in the jurisdiction, and that the eligible applicant has a compelling need for such a modification. If the Regional Administrator believes that these requirements have been satisfied, he shall certify the matter to the Assistant Secretary, who shall make the final decision. If the Regional Administrator does not believe that the requirements have been satisfied, he shall deny the request and so inform the eligible applicant.

(g) No participant may be placed or remain working in any position substantially equivalent to a position which is vacant due to a hiring freeze unless the eligible applicant can demonstrate that:

(1) The freeze resulted from a lack of funds to sustain former staff levels and was not established because of the availability of funds under the Act, and

(2) The promotional opportunities of regular employees are not infringed upon.

(h) Eligible applicants shall notify the RA in writing of the occurrence of any layoff or hiring freeze in a department or agency where participants are employed in positions substantially equivalent to those affected by the layoff or freeze.

(i) (1) When the total number of planned or actual rehires equals or exceeds ten percent of total public service employment positions, laid-off employees must be identified as a significant segment in the grant application. A modification is required if this point occurs during the term of the grant.

(2) Eligible applicants which, at the time these regulations become effective, have an approved grant application which permits more than ten percent of public employment positions to be used for rehires, are not required to immediately terminate participants in order to comply with paragraph (e)(1) of this section. However, such eligible applicants shall promptly notify the RA in writing of the measures proposed to be taken to reduce the level of rehires over a reasonable period of time to comply with the provisions of this section. The RA shall approve the proposal if it is reasonable in light of the conditions present in the jurisdiction. If an eligible applicant does not submit an approvable proposal, the RA may take such action as is appropriate under these regulations. Approval of a proposal eliminates the need to obtain a major modification under paragraph (f)(2) of this section.

(j) Eligible applicants, program agents, contractors, or subgrantees which utilize funds under this part to hire persons to fill positions previously supported by funds other than funds available under the Act or to provide services which are normally provided by temporary, parttime or seasonal workers or which is normally contracted out, shall maintain documentation that such use of funds does not constitute a violation of paragraph (c) or of any other requirement of this section. Such documentation shall be prepared and maintained in a form which clearly demonstrates that all requirements of this section are complied with and shall be readily available for the inspection of the RA for a period of not less than one year subsequent to the filing of any position to which these provisions are applicable. Prime sponsors shall, at the direction of the RA, submit such documentation or any budgetary expenditure records, revenue statements, and other information relevant to determinations under this section. RA's shall not approve any grant application unless prime sponsors have submitted, when directed by the RA, conclusive evidence that the proposed use of funds fully meets the requirements of this section.

§ 96.25 Responsibility for selecting participants.

(a) The ultimate responsibility for the selection of participants and the maintenance of participant records as indicated in § 98.18(a), rests with the eligible applicant. However, the eligible applicant, subject to its direction, may delegate the administration of this responsibility to program agents, other subgrantees and employing agencies. The selecting agency must provide adequate documentation of each applicant's eligibility and retain in the participant's folder, as provided in § 98.18(b), the information on which this documentation is based. The selecting agency shall also retain, as provided in § 98.18(b), the applications of persons not selected for participation and the reasons for their nonselection (sec. 205(c)(2)(26)).

(b) Adequate documentation shall consist of a signed, and dated, complete application for employment, including the last date of employment, which attests that the information in the application is true, to the best of the applicant's knowledge.

§ 96.26 Place of residence for participants.

(a) *General.* (1)(i) At the time of both application and selection, program participants shall reside in an area of substantial unemployment within the jurisdiction for which funds have been designated. A program agent, therefore, may not hire persons outside of its jurisdiction nor may an eligible applicant hire a person from the jurisdiction of another eligible applicant or program agent within its own jurisdiction.

(ii) Because of changes in program agent designations each program year, this policy does not require the layoff of participants eligible under the residency requirements that were applicable at the time of their selection.

(2) An eligible applicant or program agent may receive additional funds as a subgrantee of another eligible applicant or program agent to enroll residents of the other eligible applicant's or program agent's jurisdiction in any public service job or other manpower program under Title II. The eligible applicant or program agent receiving funds must offer jobs or programs which are within reasonable commuting distance of residents of the other eligible applicant's or program agent's jurisdiction.

(b) *Consortia of eligible applicants.* In the case where two or more eligible applicants have formed a consortium to operate programs under Title I and Title II, residents of any designated area of substantial unemployment within the boundaries of the consortium may be employed in public service jobs or enrolled in any other manpower activity either within the geographical boundaries of the consortium or outside such boundaries in which case the provisions of § 96.23(b)(7) shall apply: *Provided,* That the total amount of funds available for residents of each area of substantial unemployment of each participating eligible applicant equals the amount of funds that the area would have received if the consortium had not been formed.

(c) *Consortia of units of general local government formed in order to qualify as program agents; multijurisdictional eligible applicants.* The provisions of paragraphs (a) and (b) of this section shall apply to consortia of units of general local government formed in order to qualify as program agents and shall apply to multijurisdictional eligible applicants.

§ 96.27 Eligibility for participation in a Title II program.

(a) A person residing, as defined in paragraph (f) of this section in an area of substantial unemployment who has been unemployed for at least 30 days prior to application or is underemployed is eligible to participate in a program under Title II of the Act (secs. 201 and 205(a)). A person who obtains permanent, full time unsubsidized employment after application shall no longer be considered eligible for Title II, unless, even with his full-time employment, he still qualifies as underemployed or unemployed as defined in § 94.4(fff)(2) or § 94.4(hhh) of this title.

(b) A veteran who has served on active duty for a period of more than 180 days or who was discharged or released from active duty for a service connected disability, shall be immediately eligible, upon discharge or release, for participation in a program under Title II of the Act without regard to the 30-day unemployment requirement which would otherwise pertain (38 U.S.C. 2013), provided such veteran has not obtained permanent, full-time unsubsidized employment between the time of discharge or release from active duty and the time of application for participation in Title II.

(c) A person participating in a public employment program under a section 5 or section 6 grant funded by the Emergency Employment Act (EEA) who is currently, or was at the time of his selection for such participation, geographically eligible may be transferred into the Title II grant program covering that geographical area, in order to provide for the orderly phase out of the EEA grant, provided that maximum efforts have been made to place such an individual in unsubsidized employment or training.

(d) (1) Title I, Sections 302 and 303 enrollees under the Act, and participants under Title X of the Public Works and Economic Development Act who are enrolled in Title II or VI activities funded through the Department, may be transferred into a Title II program only if they met the requirements of paragraphs (a) and (f) of this section prior to their entry into the program from which they are being transferred and if maximum efforts have been made to place such individuals in unsubsidized employment or training (sec. 105(a)(5)).

(2) Title VI participants who met the requirements contained in paragraphs (a) and (f) of this section prior to their entry into a Title VI program may be transferred into Title II, except for Title VI participants affected by the Emergency Supplemental Appropriations Act of 1976 who may be transferred to Title II without qualifying under paragraphs (a) and (f) of this section.

(3) A person participating in a WIN public service employment program under Part C, Title IV of the Social Security Act, who leaves or is removed from the public service employment position, and wishes to enroll in Title II shall be treated in the same manner as any other Title II applicant.

(i) If such an individual is still receiving cash welfare payments, that individual meets the definition of unemployed for this title, and is immediately eligible for Title II if the individual also meets the requirements of paragraphs (f) and (g) of this section.

(ii) If the individual is no longer receiving welfare payments, that individual must meet the standard eligibility criteria for Title II, including the appropriate period of unemployment.

(e) A participant in a public service employment program under this Part 96 may change jobs within a particular eligible applicant's jurisdiction without an intervening period of unemployment, but may not be employed in a job for any other eligible applicant without an intervening period of unemployment of at least 30 days.

(f) For the purpose of this section, the term residence shall mean an individual's dwelling place or home, both at the time the individual applies and is selected for participation in a program under Title II of the Act. In determining whether a particular place is an individual's dwelling place or home, the intention of the individual is the key element. Maintenance of an "address" is not necessarily the same as the maintenance of a dwelling place or home.

(g) Program participation shall be limited to citizens of the United States, natives of American Samoa and the Trust Territory of the Pacific Islands, permanent resident aliens and other aliens who have been permitted to accept permanent employment in the United States by the Immigration and Naturalization Service.

(h) While selection of eligible full-time students for participation in programs funded under Title II of the Act is not prohibited, eligible applicants should exercise caution in providing for such participation and should provide for such participation only in accordance with these regulations. In providing for such participation, eligible applicants should give special consideration to those persons most severely disadvantaged in terms of length of time they have been unemployed and their prospects for finding employment without assistance under Title II.

§ 96.28 Equitable service to the unemployed population; serving significant segments.

(a) Providing equitable services to the demographic groups (age, sex, race) within its unemployed population, taking into account the significant segments most in need of service and the incidence of underemployed in the prime sponsor's jurisdiction. Where variances as specified in § 95.14 occur in service to the demographic groups, they shall be adequately justified in the Annual Plan.

(b) The prime sponsor shall take positive steps, such as active recruitment, to insure tha the significant segments in its approved plan of service are served.

§ 96.29 Groups to be provided special consideration within the significant segment groups served.

Special consideration shall be given to:

(a) *Veterans.* (1) Eligible applicants shall take appropriate steps to provide for the increased participation of qualified disabled veterans and qualified Vietnam-era veterans who are under 35 years of age in programs under Title II. Specific effort should be made to develop appropriate full- or part-time opportunities for such veterans. Each eligible applicant shall develop local goals for service to such veterans, taking into consideration their numbers and the number of qualified persons in significant segments of the population in the area served. These goals shall be included in the eligible applicant's Annual Plan. The eligible applicant should utilize the assistance of the State and local veterans' employment service representatives in meeting these goals. In order to insure special consideration for veterans, all public service employment vacancies under Title II, except those to which former employees are being recalled, and those into which CETA participants are being transferred, must be listed with the State employment service at least 48 hours (excluding Saturdays, Sundays, and holidays) before such vacancies are filled. During this period those veterans specified above who fall within the significant segments to be served will be referred by SESA's. If sufficient numbers of veterans are not available, the employment service, upon request, may also refer members of other significant segments. In addition, eligible applicants shall, in filling public service jobs, give special consideration to special veterans; and, they shall exercise maximum efforts to design jobs and job training opportunities for veterans who have received other than a dishonorable discharge within four years before the date of their application (sec. 205(c)(5)).

(2) Each eligible applicant shall, on a continuing and timely basis, provide information on job vacancies and training opportunities funded under Title II of the Act to State and local veterans employment representatives and to other veterans organizations for the purpose of disseminating information to eligible veterans (sec. 104(b) of Emergency Jobs and Unemployment Assistance Act of 1974).

(b) *Welfare recipients.* Eligible applicants shall give special consideration to welfare recipients by taking them into account when selecting participants within significant segments and/or by identifying them as a significant segment in the Annual Plan.

(c) *Former manpower trainees.* Due consideration shall be given, in developing an eligible applicant's plan and enrolling individuals in the manpower programs funded under Title II of the Act to persons falling within the significant segments to be served, who have participated in manpower training programs and for whom work opportunities are not otherwise immediately available (sec. 205(c)(9)).

(d) *Teachers.* In filling teaching positions in elementary and secondary schools, each eligible applicant shall give special consideration to unemployed persons with previous teaching experience who are certified by the State in which that prime sponsor is located (sec. 205(d)).

§ 96.30 Serving the most severely disadvantaged persons.

In meeting the requirements of §§ 96.28 and 96.29 above, the eligible applicant shall give priority to unemployed persons who are the most severely disadvantaged in terms of the length of time they have been unemployed and their prospects for finding employment without assistance under Title II (secs. 205(c)(7) and 210).

§ 96.31 Training and supportive services.

Eligible applicants may provide training and supportive services to an individual participating in a public service employment program. Training may be that which is auxiliary to a participant's position or that which is of benefit to the participant in obtaining employment not subsidized under the Act. Eligible applicants may use Title II funds to provide training and supportive services or may utilize funds made available to its jurisdiction under other Titles of the Act, provided the funds from each Title are utilized consistent with the regulations for the funding source Title. Training may be provided directly or may be purchased from public or private organizations. Due consideration should be given to the utilization of existing services and facilities which are available, with or without reimbursement of the reasonable cost, from Federal, State and local agencies (secs. 105(a)(3)(B), 105(c)(2) and 205(c) (14) and (19)).

§ 96.32 Linkages with other manpower programs.

An eligible applicant shall, where appropriate, maintain or provide linkages with upgrading and other manpower programs for the purpose of (a) providing public service employment participants who want to pursue work with the employer, in the same or similar work, with opportunities to do so and to find permanent, upwardly mobile careers in that field, and (b) providing those persons so employed, who do not wish to pursue permanent careers in such field, with opportunities to seek, prepare for, and obtain work in other fields. Eligible applicants shall also maintain linkages with agencies, such as State vocational rehabilitation departments, to provide needed supportive services for participants, such as the elimination of any barriers to employment created by the architectural design of the worksite.

§ 96.33 Placement goals.

(a) Public service employment programs under the Act shall, to the extent feasible, be designed to enable all individuals to move from such employment programs into unsubsidized full-time jobs in the private or public sector, and shall emphasize the development of new careers and career development opportunities (secs. 201 and 205).

(b) Each eligible applicant, program agent, and subgrantee shall be responsible for efforts to place all participants in unsubsidized employment in both the private sector and the public sector, or in training programs.

(c) (1) To carry out the intent of paragraph (b), each eligible applicant, program agent and subgrantee, to the extent consistent with law and applicable collective bargaining agreements, shall have the goal of accomplishing on an annual basis at least one of the following:

(i) Placing half of the cumulative number of participants terminated in unsubsidized private or public sector employment;

(ii) Placing participants in half the vacancies occurring in suitable occupations in an eligible applicant, program agent, or subgrantee's permanent work force which are not filled by promotion from within the agency.

(2) When a suitable job offer or offer of referral to a suitable job is made to and rejected by a participant, this can be construed as being acceptable grounds for termination of the

participant by the prime sponsor regardless of how long the individual has been in the program. Suitable job shall mean a job which is: comparable to the participant's CETA job in terms of working conditions and benefits; the same or equivalent to the participant's CETA job or otherwise commensurate with his/her skill level; located within a commuting distance of the participant's home comparable to the distance traveled by others in the jurisdiction similarly employed; and not vacant due to a strike or based on a requirement that an employee must join or resign from a union.

(d) Placement goals established consistent with paragraph (c) above are to be understood as goals and are not prescribed as placement requirements (sec. 211(b)).

(e) Any eligible applicant shall have the right to request a waiver of such placement goals. The request for a waiver may be submitted at any time, and may be granted by the RA when in the RA's judgment local economic conditions and budgetary constraints warrant such a waiver (sec. 211(b)).

(f) Whenever such a waiver has been granted by the RA, failure to meet the placement goals shall not be cited in any official review or evaluation of that eligible applicant's program (sec. 211(b)).

§ 96.34 Compensation for participants.

(a) *Minimum wage for participants.* Each participant shall be paid at a rate no less than the highest of the following:

(1) The minimum hourly wage set out in sec. 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. The exceptions to section 6(a)(1) shall not apply to public service employment participants;

(2) The State or local minimum wage for the most nearly comparable covered employment;

(3) The prevailing rate of pay for persons employed in similar public occupations by the same employer (sec. 208(a));

(4) The minimum entrance rate for inexperienced workers in the same occupation in the establishment, or, if the occupation is new to the establishment, the prevailing entrance rate for the occupation among other establishments in the community or area, or any minimum rate required by an applicable collective bargaining agreement; or

(5) The prevailing rate established by the Secretary, in accordance with the Davis-Bacon Act, as amended, for participants involved in employment covered by the Davis-Bacon Act as specified in § 98.29 of this title.

(b) Wages in the Commonwealth of Puerto Rico, the Virgin Islands, and American Samoa shall be consistent with provisions of the Federal, State or local law, otherwise applicable. Wages in the Trust Territory of the Pacific Islands shall be consistent with local law, except on Enewetak Atoll and Kwajalein Atoll, where Section 6(a)(1) of the Fair Labor Standards Act applies.

(c) *Limitations on participant's salary.* (1) Compensation to any participant from Title II Federal funds is limited to a maximum full-time rate of $10,000 per year, plus the cost of fringe benefits to the extent they do not exceed those paid to workers earning $10,000 a year. This limitation shall also be applicable for participants in public service employment funded under other titles of the Act.

(2) When a participant is eligible for a promotion, a general salary increase or overtime pay that would mean a salary in excess of $10,000, the participant is entitled to it if other employees similarly employed would receive such benefits. The employer must pay the amount above $10,000 from non-CETA funds as well as a prorated share of the increased fringe benefits. Funds from other titles of the Act shall not be used to supplement the maximum salary limitation for participants.

§ 96.35 Administrative staff.

(a) *General.* To the extent possible, administrative staff shall be drawn from the unemployed and underemployed population. However, if necessary technical, supervisory and administrative personnel are not available in the unemployed and underemployed population, staff may be recruited from other available sources (sec. 205(c)(20)).

(b) *Compensation.* Eligible applicants may compensate administrative staff from:

(1) Funds not provided under the Act. No maximum salary limitation will apply in this case;

(2) Administrative funds allowed under Title II as specified in § 96.36. This applies only to non-participants on the administrative staff in which case no salary limitation will apply; or

(3) Funds expended under Title II for wages and fringe benefits for participants as specified in § 96.36 of this Part 96. In this case, the administrative staff member must meet the Title II participant eligibility requirements and be hired as a Title II participant. The salary limitation specified in § 96.34(b) shall apply. Any salary paid to a participant in excess of $10,000 must be paid from funds other than those provided under the Act.

§ 96.36 Use of Title II funds for programs under Titles I and III-A.

Funds available to an eligible applicant may, at its option, be utilized for residents of the areas of substantial unemployment designated under this Part for programs authorized under Title I or Part A of Title III of the Act. Where Title II funds are used for activities other than PSE authorized under other Titles of the Act, all provisions under this Part, except § 96.21 (b), (c), (e), (g), and (h), § 96.27(e), § 96.31, § 96.33, § 96.34, and § 96.36, shall apply in addition to those provisions applicable for programs under Title I or Part A of Title III (sec. 210); however, when Title II funds are used to fund public service employment, all of the provisions of this Part 96 shall apply.

Subpart D—Special Conditions for Grants to Indian Tribes on Federal and State Reservations

§ 96.40 General.

This Subpart D contains special conditions for grants to Indian tribes on Federal and State reservations. To the extent that any provision of this Subpart D differs from any other provision of this Part 96, the provisions of this Subpart D shall govern. In all other matters the requirements of Part 96 apply to this Subpart D. The Division of Indian and Native American Programs in the Office of National Programs shall have full responsibility for all matters pertaining to funds allocated to Indian tribes on Federal and State reservations under Title II of the Act. All references to RA in Part 96 shall be read as Director, Division of Indian and Native American Programs.

§ 96.41 Distribution of funds.

(a) This section describes the methodology for the distribution of funds allocated to Indian tribes on Federal and State reservations as determined by the ratio prescribed in Subpart A, § 96.2.

(b) Funds for Indian tribes eligible for application under Title II shall be distributed as follows:

(1) Funds for use under this Subpart D shall be distributed on the basis of a ratio taking into account the total number of unemployed Indians on all Federal and State Indian reservations which have areas of substantial unemployment and comparing this number with the total number of unemployed persons in all eligible applicant jurisdictions under this Part 96.

(2) Funds determined under paragraph (b)(1) shall be distributed for use by the individual Indian reservations which have areas of substantial unemployment according to the best available estimates of unemployment on each such reservation as compared to the total unemployment on all such reservations.

(c) Funds shall only be granted for individual reservations which have a governing body and either have a population of at least 1,000 resident Indians or are entitled to a Title III, Section 302, grant of at least $50,000. Reservations which do not meet either of these requirements may, however, be combined to qualify for funds as provided in § 96.42 (sec. 204(c)).

(d) An eligible applicant which represents more than one reservation shall further allocate funds for use among those reservations in accordance, to the extent feasible, with the amounts indicated by the Secretary for each reservation.

(e) Within a single reservation, or within those small reservations which are members of a consortium, the eligible applicant shall, to the extent feasible, allocate granted funds among identifiable areas of high unemployment (sec. 204(c)).

§ 96.42 Eligibility for funds.

(a) An independently eligible applicant shall be an Indian tribe on a Federal or State reservation which includes areas of substantial unemployment.

(b) An eligible applicant shall come under one of the following categories:

(1) *Independently eligible applicant.* An independently eligible applicant shall be an Indian or Alaskan tribe which has:

(i) An identifiable resident population of at least 1,000 individuals or which is entitled to an allocation of at least $50,000 under CETA Title III section 302 regulations, i.e., Part 97, Subpart B of this title; and

(ii) A governing body. A governing body is defined as one having substantive powers, i.e., consists of duly elected representatives who have authority to provide services and to enter into contracts and grants on behalf of the electorate and who are recognized as having such authority by the appropriate Federal or State agencies (sec. 204(c)). In the case of a reservation with more than one tribe, each tribe which is independently eligible according to the criteria of this paragraph shall be entitled to a separate grant. Such tribes, however, will be encouraged to form a consortium for the administration and operation of a comprehensive manpower program.

(2) *Consortium prime sponsor.* Indian or Alaskan entities which do not meet the criteria to be an independently eligible applicant as outlined in paragraph (b)(1) of the section may participate in a consortium as set forth below:

(i) Consortium including an independently eligible applicant. An Indian or Alaskan entity may enter into a consortium with an eligible applicant under paragraph (b)(1) of this section. The consortium thus formed shall be the eligible applicant, and a member of the consortium, or an entity formed by the members, must be designated as the administrative arm and be delegated the responsibility for operating the program. Such a consortium may operate in more than one State. The administrative unit must be capable of performing both the functions required of a governing body and those necessary to carry out a public service employment program as prescribed by this Subpart.

(ii) Consortium where no member meets the criteria to be an independently eligible applicant. A consortium may be formed by Indian or Alaskan entities, none of which is eligible to be an independently eligible applicant under paragraph (b)(1) of this section, provided that:

(A) All of the members are in geographic proximity to one another; and

(B) The combination of entities has a resident population of at least 1,000 persons; or

(C) The combination of entities is entitled to an allocation of at least $50,000, under CETA Title III section 302 criteria (Part 97, Subpart B of this title).

(iii) Consortium involving public or private non-profit agencies. An Indian or Alaskan entity may enter into a consortium with a public or private non-profit agency. The consortium thus formed shall be the eligible applicant and the public or private non-profit agency shall be the administrative arm. This type of consortium may be formed where such entity is not independently eligible to be an eligible applicant, chooses not to be an applicant, or determines that such a consortium will provide for a more effective and efficient program. Whenever an Indian or Alaskan entity joins with a public or private non-profit agency to form a consortium, such agency must be capable of performing both the functions required of a governing body and those necessary to administer a comprehensive manpower program. The minimum combined population requirement of 1,000 persons shall not be applicable to this type of consortium. However, the combined allocations for the members must be of such an amount that, in the opinion of the Secretary, it will be possible and feasible to provide public employment services to those unemployed and underemployed Indians who are in need of such services. Examples of eligible agencies are Intertribal Council, Title I prime sponsors and Tribal Chairmen's Associations.

(c) Where there are Indian or Alaskan entities which do not meet the eligibility criteria to be an independently eligible applicant, or which do meet the criteria, but decline to operate a program, the Secretary shall designate an eligible applicant deemed appropriate and capable of providing the required services except that the Indian or Alaskan entities shall have the right of approval of such eligible applicant:

Provided:

(1) The Indian or Alaskan entity meets the definition for Indian tribe, band, group, or Alaskan native village and can prove that it represents at least 1,000 individuals. In addition, the Indian or Alaskan entity must provide a written explanation of the official procedures utilized to select its spokesman. Such Indian or Alaskan entity shall either have determined it does not wish to sponsor a public service employment program, or have been declared ineligible for independent eligibility because of the lack of a governing body or because of its inability to perform the functions necessary to carry out a public service employment program; or

(2) A combination of entities, as defined in this subpart, can prove, by providing the Secretary with a list of its members living within the designated areas, that, when combined, such combination represents at least 1,000 individuals. Such combination shall not be an independently eligible applicant either because it chooses not to become one, or lacks the ability to perform the functions required of a governing body, or lacks the ability to perform the functions necessary to administer a public service employment program, as defined by these regulations, or all of the above.

§ 96.43 Funding of eligible applicants.

(a) In order to be funded, a potentially eligible applicant must request to operate a program under Title II by complying with the provisions of § 97.111 of the regulations for Indian Employment and Training Programs funded under Section 302 of the Act.

(b) Each potentially eligible applicant will receive a tentative allocation against which it will prepare and submit its grant application.

(c) *General.* The grant application will consist of two documents, the Prime Sponsor Agreement (PSA) and the Annual Plan (AP). Detailed instructions for completing the application are contained in the Forms Preparation Handbook.

(1) *Prime sponsor agreement.* An applicant applying for the first time shall not later than 30 days prior to submission of the Annual Plan submit to the Director, Division of Indian and Native American Programs (DINAP), a signed copy of the PSA. An applicant who has already effected a PSA shall submit with the Annual Plan to the Director, DINAP, a certification that the PSA remains the same or is revised in certain respects which are attached to the certification. The initial submission and subsequent certifications are subject to the comment and publication procedures of § 96.45. The PSA consists of:

(i) A signatory page (see § 95.14(b)(1));

(ii) A narrative description of general information; and

(iii) Assurances and certifications.

(2) *Annual plan.* On a date set by the Director, DINAP, an Annual Plan must be submitted to the Director, DINAP. The submission of the AP is subject to the comment and publication procedures of § 96.45. The Annual Plan consists of:

(i) An Application for Federal Assistance. (See 95.14(c)(1));

(ii) An Annual Narrative Description of program;

(iii) A Program Planning Summary (see §95.14(c)(3));

(iv) A Budget Information Summary (see § 95.14(c)(4));

(v) A Public Service Employment Occupational Summary (see § 95.14(c)(5));

(vi) A Monthly Schedule (see § 96.14(b)(6)); and

(vii) A Program Summary (see § 96.14(b)(7)).

§ 96.44 Planning process; advisory councils.

Eligible applicants should utilize the services of their planning councils authorized under § 97.113 of the regulations for Indian Employment and Training Programs funded under section 302 of the Act.

§ 96.45 Comment and publication procedures relating to submission of Indian grant applications.

(a) Each eligible Indian applicant which plans to apply for a grant shall, no later than the date of its submission of an application to the Director, Division of Indian and Native American Programs, provide an opportunity to comment on its application to the following officials in accordance with section 206 of the Act:

(1) The Governor;

(2) Appropriate officials of units of general local government; and

(3) Officials of labor organizations representing employees who are engaged in similar work in the same area.

(b) Comments by those individuals and officials listed in paragraph (a) of this section shall be made to the eligible applicant and the Director within 30 days of the receipt of notice of the opportunity to comment.

(c) Eligible Indian applicants shall acknowledge any comments made pursuant to this section by providing the commenting party with appropriate information and notice regarding the actions or revisions the applicant intends to take or adopt, if any, due to the comment. All such comments and responses shall be transmitted to the Director, Division of Indian and Native American Programs.

(d) The Director, Division of Indian and Native American Programs, will notify the appropriate State and areawide clearinghouses of any applications from federally recognized tribes, upon their receipt.

§ 96.46 Assistance by the Director, Division of Indian and Native American Programs.

Applicants eligible under this Subpart D may request technical assistance from the Director of Indian and Native American Programs in the preparation, submission, and/or implementation of a Title II program. Requests for assistance should be addressed to: Director, Division of Indian and Native American Programs, 601 D Street, N.W., Washington, D.C. 20213.

§ 96.47 Participant eligibility.

Unemployed and underemployed Indians are eligible to participate in programs funded with eligible applicants under this Subpart D or in programs funded with all other eligible applicants in whose jurisdictions they reside.

§ 96.48 Nepotism.

(a) No eligible applicant or subgrantee under this Subpart D shall hire, or permit the hiring of, any person in a position funded under Title II of the Act if a member of the person's immediate family is employed in an administrative capacity by the eligible applicant. For the purposes of this section, the term "immediate family" means wife, husband, son, daughter, mother, father, brother, and sister; the term "administrative capacity" includes those persons who have overall administrative responsibility for a program, including: all elected and appointed officials who have any responsibility for the obtaining of and/or approval of any grant funded under the Act as well as other officials who have any influence or control over the administration of the program, such as the project director, deputy director, and unit chiefs and persons who have selection, hiring, or supervisory responsibilities for participants in a program under this Part 96, or operational responsibility for the program.

(b) If a subgrantee under this Subpart D cannot hire program participants without an immediate family member being included, the Director, Division of Indian and Native American Programs may waive the requirement of paragraph (a) if adequate justification is received from such subgrantee that no other persons within the subgrantee's jurisdiction are eligible and available for participation.

(c) Where a tribal policy regarding nepotism exists which is more restrictive than this policy, the eligible applicant shall follow the tribal rule in lieu of this policy.

§ 96.49 Non-discrimination.

Section 98.21 shall be applicable to Indian programs funded pursuant to Title II of the Act, except to the extent that such provisions conflict with 42 U.S.C. 2000e(b).

§ 96.50 Subgrants.

In addition to the requirements as set forth in § 98.27 concerning subgrants, Indian tribes may require that subgrantees agree, to the maximum extent feasible, to hire qualified Indians to provide services called for pursuant to the subgrant in accordance with 42 U.S.C. 2000e-2(i).

§ 96.51 Travel requirements.

Travel regulations for grantees under this subpart shall be consistent with the travel regulations at § 97.161(f)(7) of this title.

PART 97—SPECIAL FEDERAL PROGRAMS AND RESPONSIBILITIES UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

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Subpart A—Summer Program for Economically Disadvantaged Youth Under the Comprehensive Employment and Training Act

AUTHORITY: Comprehensive Employment and Training Act of 1973, as amended Pub. L. 93-203, 87 Stat. 839 (29 U.S.C. 801 et seq.); Pub. L. 93-567, 88 Stat. 1845 and Pub. L. 94-444, 90 Stat. 1476), secs. 702(a) and 304(a)(3), unless otherwise noted.

SOURCE: 43 FR 21859, May 19, 1978, unless otherwise noted.

GENERAL

§ 97.1 Scope and purpose.

(a) This Subpart A contains the policies, rules, and regulations of the Department in implementing and administering a Summer Program for Economically Disadvantaged Youth (hereinafter referred to as the Summer Program) authorized by Title III, section 304(a)(3), of the Comprehensive Employment and Training Act (hereinafter referred to as the Act).

(b) Programs funded under this Subpart A shall be designed by summer sponsors, defined in § 97.4, to provide summer employment and any other activities and services except public service employment described under Title I of the Act.

(c) Subpart A should be read in conjunction with Parts 94, 95, 97, and 98 of this Title. The provisions of Parts 95 and 97, however, apply to this Subpart A only as indicated in specific sections of these regulations. The definitions of Part 94 and the provisions of Part 98 shall apply to this Subpart A, unless otherwise indicated in specific sections of these regulations.

(d) The Division of Indian and Native American Programs in the Office of National Programs shall have field responsibility for all matters pertaining to funds allocated to Indian and Native American Employment and Training Program summer sponsors for programs funded under this Subpart A. All references to RA in this Subpart A shall be read as *Director, Division of Indian and Native American Programs*, when pertaining to programs for Indian and Native Employment and Training Program summer sponsors.

(e) The regulations in this part govern programs funded under the Comprehensive Employment and Training Act of 1973 prior to amendment and reauthorization in 1978 (Pub. L. 95-524, 92 Stat. 1909), and are thus in many particulars superseded by regulations implementing the reauthorized Comprehensive Employment and Training Act, Pub. Law 95-524, 92 Stat. 1909, which are being codified at 20 CFR Parts 675 *et seq.* Any questions regarding the applicability of any particular regulation in Title 29 should be addressed to the Regional Administrator for the Employment and Training Administration.

[43 FR 21859, May 19, 1978, as amended at 44 FR 37911, June 29, 1979]

§ 97.2 Allocation of funds.

(a) *General.* The funds available for Title III, section 304(a)(3) in any Fiscal Year shall be allocated according to the procedures set forth below; except that the Secretary may reserve up to 5 percent of available funds to fund a national vocational exploration program, and for other discretionary purposes.

(b) *Prime sponsor basic allocations.* Allocations of funds for summer sponsors who are prime sponsors under Title I of the Act shall be based on the following formula:

(1) Fifty percent of such funds shall be allocated based on each sponsor area's proportion of the funds allocated for the previous year Summer Program;

(2) Thirty-seven and one-half percent of the funds shall be allocated based on the ratio of the annual average number of unemployed persons in the sponsor's area (in the most recent year for which data are available) to the total annual average number of unemployed persons in the United States in that year;

(3) Twelve and one-half percent of the funds shall be allocated based on the ratio of the number of persons in low income families in the sponsor's area to the total number of persons in low income families in the United States;

(4) Each sponsor shall receive a new allocation which when added to its unspent previous year's summer funds as of December 31, shall be equal to the amount determined by the above formula; and

(5) To the extent that funds are available, allocations shall be adjusted by the Secretary to insure that each prime sponsor area receives adequate funding to provide at least the same number of opportunities as were available in the area under the Summer Program for Economically Disadvantaged Youth in the previous year.

(c) *Native American prime sponsor allocations.* The total funds for Native American summer sponsors shall be allocated based on the ratio of the number of Native American youth 14 through 21 years of age in the eligible Native American summer sponsor's area to the total number of Native American youth 14 through 21 years in all Native American summer sponsor areas, except that adjustments in the allocations shall be made to insure that to the extent funds are available, no area receives less funds than were provided under the previous year's Summer Program.

(d) *Other allocation.* The allocation to Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Marianas, in the aggregate, shall be equal to the same percentage of the funds allocated to them in the aggregate under the previous Summer Program.

§ 97.3 Unexpended previous year summer program funds.

Unexpended summer program funds as of December 31 of each year must be utilized in the next year for appropriate summer activities and expended in accordance with these regulations. During the period between January 1 and the close of the school year, these funds shall be expended consistent with the provisions of §§ 97.7(b) and 97.17.

§ 97.4 Eligibility for funds.

The following are eligible to be summer sponsors:

(a) Prime sponsors designated to operate programs under Title I of the Act; and

(b) Native American Employment and Training Program prime sponsors which are Indian tribes on Federal or State reservations, recognized tribes in Oklahoma and Alaskan native villages.

GRANT PLANNING, APPLICATION, AND MODIFICATION PROCEDURES

§ 97.5 Content and description of grant application.

In order to receive funds, each eligible summer sponsor shall submit a summer plan which, when approved, together with the Prime Sponsor Agreement (PSA), shall become the grant application.

§ 97.6 Preapplication for Federal assistance.

(a) An eligible summer sponsor interested in receiving financial assistance shall submit a preapplication to the RA, the Governor and the appropriate State and areawide A-95 clearinghouses (see Part I of Attachment A, OMB Circular A-95) by a date established by the RA. The preapplication shall consist of Standard Form 424 as prescribed by Federal Management Circular (FMC) 74-7.

(b) State and areawide clearinghouses may request information in addition to that furnished on the preapplication form. Such a request shall be made within 30 days of receiving the preapplication in order to avoid delay in a prime sponsor applicant's preparation of its summer plan.

(c) The A-95 clearinghouses shall within 30 days of receiving the preapplication, inform the prime sponsor applicant of any actual or potential problems with the preapplication and notify the prime sponsor applicant if they wish to review the completed plan. If the prime sponsor applicant receives no such notifications, the prime sponsor applicant has fulfilled its obligation under A-95 and it may submit its plan to the RA without submitting it to the A-95 clearinghouses.

§ 97.7 Program planning, planning and youth councils.

(a)(1) In developing the summer program the prime sponsor shall coordinate such plan with its Title I, YETP, and YCCIP annual plans.

(2) Eligible summer sponsors which are prime sponsors under Title I of the Act shall utilize the planning process and planning council, as described in § 95.13 (b) and (c) of this title; and the youth council established for YETP. The roles and responsibilities of the youth council shall be those described in §97.705(b) (1), (2), (3), and (5).

(b) Upon approval from the RA, the following planning and design activities shall be allowable beginning January 1 of each year:

(1) Hiring of staff (planners, worksite developers, intake specialists, etc.);

(2) Development of summer plan;

(3) Publication and clearance through A-95;

(4) Worksite development;

(5) Recruitment, intake and selection, but not enrollment;

(6) Establishment of arrangements for supportive services;

(7) Dissemination or program information;

(8) Development of coordination between schools and other services;

(9) Staff training; and

(10) Other activities with the approval of the RA that may be characterized as planning and design but not program operation.

§ 97.8 Description of the summer plan.

The summer plan consists of the following items:

(a) Approval Request Letter.

(b) Application for Federal assistence (Standard Form 424) which is contained in FMC 74-7.

(c) Narrative description of the summer program consisting of the following:

(1) Objectives and needs for assistance—a discussion of:

(i) The program's purpose and goals in terms of local needs of youth; and

(ii) The rationale for the selection of significant segments by the summer sponsor as it relates to the program purposes and goals.

(2) Results and benefits expected—a discussion of:

(i) How the enrollment of participants in the various program activities and the projected program outcomes reflect the program purposes. This should include a description of how the program activities will serve the needs of the particular significant segments designated by the summer sponsors;

(ii) Efforts to obtain academic credit for youth as a result of competencies gained on the job during the summer program; and

(iii) Other benefits which will accrue to participants.

(3) Approach—a description of:

(i) The role of the Youth Council in the formulation of the summer program;

(ii) How analyses of the previous summer program were used in the planning of the program including the selection of the worksites;

(iii) The methods, procedures, standards, etc., used to make worksite selections and items to be covered by worksite agreements;

(iv) Special methods, if any, specifically designed for recruitment of summer participants (as distinguished from other participants) and who the recruiting agent(s) will be;

(v) The intake process, including the particular methods to be used and the identity of the service providers;

(vi) The process of determining eligibility and the verification methods to be used;

(vii) The orientation, assessment, and assignment process;

(viii) The work experience, on-the-job training and; classroom training activities indicating the number of youth who will be served in each of these components, and a discussion of labor market orientation and any skill training and remedial education to be provided;

(ix) Any special services to be provided to designated significant segments;

(x) The supportive services which will be provided to participants;

(xi) Any vocational exploration programs, funded under the summer plan, including:

(A) Number of total participants and planned expenditures;

(B) Name of organizations with which the prime sponsor has a contract or written agreement listing the number of participants and types of occupations to which participants will be exposed;

(C) The methods and techniques which will be used to provide broad career exposure;

(D) The methods the prime sponsor has developed to ensure that youth are not involved in work experience or any other activity which contributes to, or could be expected to contribute to, additional sales or profit for a private-for-profit organization or otherwise result in the subsidization of wages for such organizations; and

(E) Evidence of the approval of labor organizations representing employees in the affected collective bargaining units;

(xii) The methods and delivery agents which will be used in placing participants into jobs, other CETA programs, etc., and of arrangements for providing continuity of services, and the efforts that will be made to encourage participants to return to school;

(xiii) A description of the linkages established with SESA's, local educational agencies and post-secondary institutions, labor organizations, the private sector (other than organizations conducting vocational exploration programs), neighborhood and community based organizations and other youth related programs/agencies; and

(xiv) How the summer program will enhance the employment potential of participants and how this strategy will be coordinated with other CETA programs.

(4) Management and Administration Plan.

(i) An organization chart and staffing pattern and an explanation of how it relates to the prime sponsor's regular organization pattern;

(ii) A detailed description of monitoring procedures, including the number of planned visits to each worksite, the activities to be monitored, and procedures and time frames for taking corrective action, including followup visits;

(iii) A discussion of plans to assess the overall program and the performance of each worksite employer, including how the knowledge gained will be used to improve the quality of other youth programs and the next year's summer program;

(iv) A description of any special payroll process or any special allowance payment system not previously described in the PSA; and

(v) A discussion of the cost plan, including an explanation of how administrative costs were determined.

(d) CETA Youth Program Planning Summary and Youth Budget Information Summary which provide information on the estimated number of participants and accrued expenditures.

§ 97.9 Comment and publication procedures.

The comment and publication procedures of § 95.15 shall be applicable to the summer program, except that the newspaper publication and provision of the application to Governors, appropriate units of government, appropriate Native American prime sponsors, appropriate labor organizations and State and sub-State clearinghouse(s) may be simultaneous with submission of the summer plan to the RA. However, in order to expedite the start of the summer program operations in the most effective manner, the RA may conditionally approve the grant application within the 30 day comment period: *Provided,* The prime sponsor subsequently acknowledges any written comments pursuant to § 95.15(e) and if warranted by such comments modifies the grant pursuant to § 95.21(a)(2)(i).

§ 97.10 Submission of summer plan; review and approval.

(a) A program shall be undertaken upon execution of the summer plan between a summer sponsor and the RA. The RA shall send a summer plan package to each eligible summer sponsor. The summer plan shall be submitted to the RA not later than a date set by the RA.

(b) Each summer program shall be reviewed by the appropriate RA using all the standards described in § 95.17 (a) and (b) (1), (7), (8), and (9) of this title.

(c) Each summer plan shall be approved or disapproved under the provisions and conditions described in §§ 95.18 and 95.19 of this title.

§ 97.11 Use of alternative sponsor and services by the Secretary; reallocation of funds.

(a) If a summer plan is not submitted, or is denied, or terminated, the Secretary may make provisions for the use of an alternative sponsor, or provide services directly pursuant to § 95.20 of this title.

(b) The reallocation provisions of § 98.11 of this title shall be applicable to the summer program, except that reallocation may occur immediately (without regard to the number of months that have elapsed in the fiscal year of the grant) after completion of the notice and comment procedure specified in § 98.11(d). The comment period specified in § 98.11(d)(2) shall be limited to 10 days. Priority shall be given in reallocating such funds to other areas within the same State.

§ 97.12 Modification to the summer plan.

(a) (1) A modification to the summer plan requiring prior regional office approval is necessary under any of the following conditions:

(i) Change in duration of the summer plan;

(ii) Change in summer plan allotment; and

(iii) Substantial change in program design and/or program goals defined as follows:

(A) When the cumulative number of individuals to be served is proposed to be increased or decreased by 15 percent or more.

(B) For grants of $100,000 or less, when the cumulative transfer of funds among program activities or cost categories exceeds $15,000.

(C) For grants of over $100,000 when the cumulative transfer of funds among program activities or cost categories exceeds $50,000 or 15 percent of the total grant budget, whichever is less.

(2) A summer sponsor desiring a modification as defined in paragraph

(a)(1) of this section, shall submit a revised Youth Budget Information Summary, a revised Youth Program Planning Summary and an explanation of the proposed changes to the RA.

The RA shall notify the sponsor of approval or disapproval within 10 days of receipt of the proposed modification.

(b) The RA may initiate a modification as described in § 95.21(b)(iv) of this title.

PROGRAM OPERATIONS

§ 97.13 Basic requirements for program operation.

Each summer sponsor shall:

(a) Follow the regulations of this subpart;

(b) Follow the provisions described in § 95.31 (a), (b), (e), and (f) of this title;

(c) Provide services to those individuals most in need among its economically disadvantaged youth population, within the prime sponsor's jurisdiction, taking into account any priorities identified by the Secretary. Such services shall be provided on an equitable basis considering the geographic distribution of economically disadvantaged youth within the prime sponsor's jurisdiction;

(d) Design programs which are, to the maximum extent feasible, consistent with every participant's fullest capabilities;

(e) Maintain accounting records in accordance with §§ 98.12 and 98.13 of this title;

(f) Give special consideration to the needs of eligible veterans as described in § 95.32(e)(1) of this title;

(g) Develop outreach and recruitment techniques aimed at all segments of the economically disadvantaged youth population; especially school dropouts, youth not likely to return to school without assistance from the summer program, and youth who remain in school but are likely to be confronted with significant employment barriers relating to work attitude, aptitude, social adjustment, and other such factors;

(h) Provide labor market orientation to all participants. This orientation may include vocational exposure, counseling, testing, resume preparation, job interview preparation, providing labor market information, providing information about other training programs available in the area, including apprenticeship programs, and similar activities. It may be provided on a group or individual basis. Skill training and remedial education may be provided on an as-needed basis. In providing labor market orientation, skill training and remedial education, each sponsor shall make maximum efforts to develop cooperative relationships with other community resources so that these activities are provided in the summer program at no cost, or at minimum cost, to the summer program;

(i) Coordinate its summer activities with an organization operating a nationally funded vocational exploration program in its area pursuant to § 97.16(b);

(j) Use cooperative relationships established under YETP with other agencies and institutions that provide employment and training services to youth in the community;

(k) Ensure that adequate supervision is provided to participants at each worksite;

(l) Make appropriate efforts to encourage educational agencies and post-secondary institutions to award academic credit for the competencies participants gain from their employment;

(m) Ensure that all appropriate efforts are made to closely monitor the performance of service deliverers in compliance with § 97.25(d) as well as Part 98, Subpart B, Assessment and Evaluations. Specifically, prime sponsors shall have sufficient technical and managerial personnel to monitor performance and to measure program outcomes against prime sponsor established goals;

(n) Ensure that enrollee applications are widely available and that jobs are awarded among individuals most severely disadvantaged in an equitable fashion; and

(o) Enter into subgrants and contracts in accordance with § 98.20 and OMB Circular A-102, Attachment O.

§ 97.14 Eligibility for participation.

(a) Each person shall be:

(1) At the time of application economically disadvantaged as defined in § 94.4(s) of this title; and

(2) At the commencement of participation 14 through 21 years of age.

(b) Wards of the court and offenders 14 through 21 years of age determined to have left the family unit or who otherwise do not have access to the benefits that family income would normally be expected to provide shall be treated as a family of one and only income generated by themselves shall be used in determining income status; such a determination shall be based on the certification by an assigned probation officer, or other responsible court official that the youth has lived at home 50 percent or less of the time in the last 6 months.

(c) A current participant in another CETA program who at the time of his or her initial application into that CETA program met the criteria of paragraph (a)(1) of this section may be enrolled in a summer program without recertification of the youth's family income. The provision of paragraph (a)(2) of this section shall apply.

(d) Citizenship may not be used as a criterion to prevent persons from participating in a summer program. However, program participation shall be limited to nationals of the United States and aliens who have been accorded the privilege of residing in the United States as lawful permanent residents or refugees, including refugees who are parolees.

§ 97.15 Types of employment and training programs available.

(a) A program funded under this Subpart A may include any activity or service specified in § 95.33 of this title, except public service employment. Because of the short term nature of this program, public service employment opportuntities which are transitional in nature and likely to lead to regular unsubsidized employment are not appropriate under this program.

(b) As authorized in § 97.522 of this title, prime sponsors operating grants under the Youth Incentive Entitlement Pilot Projects (YIEPP) may use summer program funds for their entitlement projects. When utilizing summer funds for this purpose, the provisions of the regulations governing the entitlement program shall apply.

§ 97.16 Vocational exploration program.

(a) A summer sponsor may conduct a vocational exploration program for the purpose of exposing youth to the operation and types of jobs available in the private sector through observation of such jobs and instruction including, where appropriate, limited practical experience.

(1) The following provisions shall apply to all locally funded vocational exploration programs:

(i) All contracts, subgrants, or written agreements between summer sponsors and other parties for the operation of such programs shall at a minimum assure that:

(A) Participants in a vocational exploration program using summer funds shall receive allowances in accordance with § 95.34 of this title except, (*1*) only allowances may be paid for the vocational exploration portion of combined activities, and (*2*) participants receiving public assistance, as defined in § 94.4(ss), or whose needs or income are taken into account in determining such public assistance payments to others, may receive a stipend as an additional allowance for participation in vocational exploration in the private sector (VEP) activities: *Provided,* That the participant's total allowances (the incentive allowance plus any stipend) does not exceed the basic allowances paid to other participants. This stipend is available to participants eligible for receipt of incentive allowances to provide for the exceptional expenses incurred by these participants which might otherwise prevent the individuals from participating in a VEP activity. The first $30 of such total allowance payment shall be disregarded in determining the amount of public assistance payments under Federal or federally assisted public assistance programs. In prescribing the total allowance payment for each participant, the prime sponsor shall insure that no individual shall receive such allowances which result in a net loss to the participant or his family in terms of total benefits. Other benefits shall be paid in accordance with § 98.24(a)(2) of this title. Wages shall not be paid to participants.

(B) The program has received the approval of any labor organization representing employees in the affected collective bargaining units;

(C) Youth will not be assigned to vocational exploration opportunities which are the subject of a labor dispute involving a work stoppage;

(D) A detailed curriculum has been developed; and

(E) The program shall not displace currently employed workers or prevent the hiring of new workers.

(ii) Organizations which have a contract, subgrant or written agreement with a prime sponsor may be reimbursed only for the costs incurred in the conduct of the program: *Provided*, That payments to employers organized for profit are only made for the costs of training which are over and above those normally provided by the employer.

(2) Whenever opportunities are located with a private-for-profit organization, the summer sponsor shall assure, in addition to items listed in paragraph (a)(1)(i) of this section, that youth will not be involved in work experience or any other activity that contributes, or could be expected to contribute, to additional sales or profit for the private-for-profit organization or otherwise result in the subsidization of wages for the organization.

(b) Where a nationally funded program operates in a summer sponsor's area, the prime sponsor shall enter into an agreement with the local representative of the program which shall include provisions dealing with arrangements for recruitment, selection, referral and certification of the youth entering the nationally funded program.

§ 97.17 Start-up of program.

(a) During the planning and design phase of the program prior to the close of the school year, only those activities outlined in § 97.7(b) are permissible. These activities shall be charged to administrative costs. Individuals may not begin participation in the program before the close of school.

§ 97.18 Worksite standards.

(a) No participants under 18 years of age shall be employed in any occupation which the Secretary has found, pursuant to his authority under the Fair Labor Standards Act, to be particularly hazardous for persons between 16 and 18 years of age (see Subpart E of Part 570, of this title).

(b) Participants who are 14 and 15 years of age will participate only in accordance with the limitations imposed by §§ 570.31 and 570.35 of Subpart C of Part 570 of this title.

(c) Each prime sponsor shall develop a written agreement with each worksite employer which assure: (1) Adequate supervision of each participant, (2) adequate accountability for participant time and attendance, and (3) adherence to the rules and regulations governing the Summer Program. Such written agreements do not have to be contracts or subgrants. They may be memoranda of understanding, simple work statements or other documents which indicate an estimate of the number of participants at the worksite and any operational conditions to which the worksite is expected to adhere.

(d) Each prime sponsor shall establish procedures for the monitoring and evaluation of each worksite to insure compliance with the worksite agreements and the terms and conditions of subgrants and contracts.

(e) No participant shall be required to work, or be compensated for more than 40 hours of work per week. Nothing in this section shall be construed as limiting an individual to a maximum number of total hours of employment in the Summer Program. While the Department uses a 9-week, 26-hour week job as the basis for estimating the number of youth to be served, it is not intended to take away the flexibility of the prime sponsor to establish job slots in keeping with the needs of the area and the youth to be served.

§ 97.19 Participant benefits.

(a) Participants in classroom training shall receive allowances as described in § 95.34 of this title and benefits as provided in § 98.24(a)(2) of this title.

(b) Participants in on-the-job training shall be compensated as specified in § 95.35 of this title, as applicable, and shall be assured of appropriate benefits and working conditions as provided in § 98.24 of this title.

(c) Participants in work experience shall receive wages, benefits and working conditions as provided in § 95.33(d)(4) (viii) and (ix) and § 98.24 of this title. Unemployment insurance shall be an allowable cost only if required by State law.

(d) Participants receiving services (including orientation to jobs/activities), other employment and training activities, or combined activities shall be compensated as specified in § 95.33(d) (5)(v), (6)(ii), and (7)(ii) of this title.

(e) Participants enrolled in vocational exploration activities shall receive allowances as described in § 97.16, and benefits as provided in § 98.24(a)(2) of this title.

§ 97.20 Training for lower wage industries and relocation of industries.

The provisions of § 95.37 of this title shall apply to the summer program.

§ 97.21 Nepotism.

(a) The provisions of § 98.22 of this title regarding nepotism apply to summer sponsors who are prime sponsors under Title I of the Act.

(b) (1) The provisions of § 98.22 (a) and (b) of this title regarding nepotism apply to Native American Employment and Training Program summer sponsors except as modified by paragraphs (b) (2), (3), and (4) of this section.

(2) No Native American Employment and Training Program summer sponsor or subgrantee shall hire, or permit the hiring of, any person in a position funded under this Subpart A if a member of that person's immediate family is employed in an administrative capacity by the Native American Employment and Training Program summer sponsor. For the purposes of paragraphs (b) (2), (3), and (4) of this section, the term "immediate family" means wife, husband, son, daughter, mother, father, brother, and sister and the term "administrative capacity" means persons who have selection, hiring, or supervisory responsibilities for participants in a program under this Subpart A, or operational responsibility for the program.

(3) If a subgrantee cannot hire program participants without an immediate family member being included, the Director, Division of Indian and Native American programs may waive the requirement of paragraph (b)(2) of this section if adequate justification is received from such subgrantee that no other persons within the subgrantee's jurisdiction are eligible and available for participation.

(4) Where a tribal policy regarding nepotism exists which is more restrictive than this policy, the prime sponsor shall follow the tribal rule in lieu of this policy.

§ 97.22 Nondiscrimination in native American employment and training programs.

Section 98.21 of this title shall be applicable to Indian programs funded pursuant to this Subpart A, except that participants must be Native Americans and staff may be limited to Native Americans. Native American summer sponsors may also require that subgrantees agree, to the maximum extent feasible, to hire qualified Native Americans to provide services called for pursuant to the subgrant in accordance with 42 U.S.C. 2000e-2(i).

§ 97.23 Reporting requirements.

Each summer sponsor shall submit the following reports to the RA:

(a) A Youth Program Status Summary, as of September 30, based on the enrollment records required under §§ 98.8, and 98.18 of this title (separate reporting of the Vocational Exploration Program component will be included in this report);

(b) Two Youth Financial Status Reports, as of September 30 and December 31, based on the accounting records required under §§ 98.8, 98.12, and 98.13 of this title (separate reporting of the Vocational Exploration Program component will be included in this report);

(c) Separate Quarterly Summary of Youth Characteristics reports, as of September 30, based on the participant records for (1) this program and (2) the Title I summer component, required under § 98.18 of this title;

(d) Selected information required on the above reports shall be submitted for informational purposes for participants and expenditures in summer components funded with monies in the sponsor's current Title I annual plan;

(e) Selected information required on the above reports shall also be submitted for reporting purposes, for participants and expenditures in entitlement projects funded with funds provided under this subpart, as well as in the required entitlement reports; and

(f) The reports in this section shall be submitted to the RA no later than 30 days after the end of the report period.

§ 97.24 Termination date for the summer program.

(a) Participants shall not be enrolled in program activities beyond September 30.

(b) Allowable activities after September 30 include: report and record preparation and submittal, completion of followup activities, completion of evaluations and assessments of worksite employees and the overall program or other elements of the summer program, and audits.

§ 97.25 Administrative provisions.

(a) Summer sponsors shall comply with the provisions of Part 98 of this title.

(b) Summer sponsors may enter into subgrants or contracts for those allowable activities or operations of the summer program only with organizations that demonstrate sufficient program capability and shall have reasonable assurances that such organizations:

(1) Have sufficient capability to operate the program;

(2) Have financial management capability as required by § 98.5 of this title;

(3) Assure in their applications that all proposed worksites meet the requirements of this subpart, and that such worksites will meet the standards of § 97.18;

(4) Assure in their applications that they will have available for review and monitoring the names and qualifications of their officers, directors, and managing personnel, including the names and qualifications of officers, directors and managing personnel of any affiliate, subsidiary, etc., who have operational or fiscal responsibilities for the summer program;

(5) Assure in their applications that they will have available a list of all Department of Labor; Department of Health, Education, and Welfare; and Department of Agriculture programs under which they have received financial assistance during the last three years and provide in their applications a statement that to the best of their knowledge, they have substantially complied with the requirements, procedures and objectives of such programs;

(6) Assure in their applications that there is no information available to them showing substantial noncompliance with the Act and regulations in operation during the terms of the previous summer program, or if there is, they shall include in their applications a copy of an acceptable plan to correct such deficiencies; and

(7) Assure in their applications that all their personnel will have some basic training in the program and regulations before the summer program begins.

(c) In selecting subgrantees and contractors the prime sponsor shall consider the capability of such organizations to:

(1) Provide worthwhile work to participants (i.e., work that is appropriate in terms of participants needs and local market demands);

(2) Provide specific services contracted for;

(3) Restrict expenditures to allowable cost items only;

(4) Submit timely and accurate reports;

(5) Authorize payment only for time worked by a participant or an employee of the project sponsor; and

(6) Provide such public information regarding the program worksites and its administrators as may be requested, including the information required to be kept under paragraphs (b)(4) and (e) of this section.

(d) To effect compliance with Part 98, Subpart B, Assessment and Evaluation, of this title, prime sponsors shall, or shall require their contractors and subgrantees to:

(1) Have supervisory and operational personnel for monitoring each site to which their participants are assigned;

(2) Assure that all sites where participants will be assigned, have the capability and facilities to provide services to summer youth in a sanitary and safe environment; and

(3) Train their own personnel and site personnel with regard to duties and responsibilities, including monitoring.

(e) Each prime sponsor shall compile and continually update a list of worksites (broken down by subgrantee and contractor) to aid in its monitoring efforts and to be made available to the public on request.

(f) Each prime sponsor shall visit worksites of each subgrantee or subcontractor on a sample basis during the first half of the summer program to determine whether:

(1) The activities on the site are those described in the worksite agreement;

(2) There is enough meaningful work to occupy all the youth assigned during the hours they are at the site;

(3) Attendance records which accurately record time worked by each enrollee are being maintained, and

(4) The requirements of the Act and this subpart are being met.

(g) In addition to following the monitoring requirements of § 98.31 of this title, each prime sponsor shall:

(1) Promptly review the reports written by its own and Federal monitors;

(2) Revisit worksites where monitors report problems; and

(3) Close worksites where it finds serious or continual violations of the Act, the regulations or the grant which are not likely to be remedied by quick remedial action.

§ 97.26 Alternative remedies.

(a) In addition to the remedial procedures available to the Secretary under Subpart C of Part 98 of this title, the Secretary, in view of the short-term nature, and the national program character, of the summer program, may employ any of the following remedies whenever the Secretary has reason to believe that a prime sponsor or one of its subgrantees or contractors has materially violated the provisions of the Act, the regulations, the terms of the summer program grant, or that the program is being administered in an inefficient or incompetent way:

(1) The Secretary may immediately terminate or suspend the prime sponsor's program in whole or in part provided the Secretary offers the prime sponsor an opportunity for a subsequent hearing; or

(2) The Secretary, for good cause, may order a subgrant or contract suspended or terminated in whole or in part effective on the date of the Secretary's order or on such other date as the Secretary determines. In cases of termination, the Secretary may allow the subgrantee or contractor to expend further funds only for purposes of closing out the subgrant or contract, including the transfer of participants into other prime sponsor's summer program slots in accordance with the Secretary's directions. Whenever the Secretary orders termination of suspension of a subgrantee or contractor under this paragraph, the Secretary may take whatever action is necessary including direct legal action against the subgrantee or contractor, or an order to the prime sponsor that it take such legal action, to reclaim misspent funds or to otherwise protect the integrity of the funds or ensure the proper operation of the summer program.

(b) All grants, subgrants and contracts under the summer program shall contain the provisions of this section.

(c) Where a subgrant or contract is suspended or terminated in whole or in part, the Secretary shall offer the subgrantee or contractor an opportunity for a hearing.

Subpart B—Indian Employment and Training Program

AUTHORITY: Pub. L. 93-203, secs. 702(a) and 302(3), 87 Stat. 839; as amended, Pub. L. 93-567, 88 Stat. 1845.

SOURCE: 40 FR 47724, Oct. 9, 1975, unless otherwise noted.

NOMENCLATURE CHANGES: 41 FR 21773, May 28, 1976.

GENERAL

§ 97.101 Scope and purpose of Title III, Section 302, programs.

It is the purpose of Title III, Section 302, of the Act to provide job training and employment opportunities for economically disadvantaged, unemployed and underemployed Indians and others of native American descent and to assure that such training and other services lead to maximum employment opportunities and enhanced self-sufficiency. The purposes of this section of the Act are to be accomplished by the establishment of a flexible system of programs. No provision of this subpart shall abrogate in any way the trust responsibilities of the Federal government to Indian bands or tribes.

§ 97.102 Scope and purpose of this subpart.

(a) The regulations promulgated to carry out the Act are set forth in 29 CFR Parts 94-99. This subpart deals with matters pertaining to the implementation and operation of Indian Employment and Training Programs pursuant to Section 302 of Title III of the Act. It is designed to contain all the regulatory material under the Act necessary for the operation of Section 302 programs except where specific reference is made to other parts of this title. If the provisions of this subpart conflict with other regulations under the Act, the provisions of this subpart shall prevail with respect to programs under Section 302 of Title III of the Act.

(b) Statutory authority for the regulations contained in this Subpart B may be found in sections 702(a), 302(e) and in other provisions of the Act.

(c) The regulations in this part govern programs funded under the Comprehensive Employment and Training Act of 1973 prior to amendment and reauthorization in 1978 (Pub. L. 95-524, 92 Stat. 1909), and are thus in many particulars superseded by regulations implementing the reauthorized Comprehensive Employment and Training Act, Pub. Law 95-524, 92 Stat. 1909, which are being codified at 20 CFR Parts 675 *et seq.* Any questions regarding the applicability of any particular regulation in Title 29 should be addressed to the Regional Administrator for the Employment and Training Administration.

[40 FR 47724, Oct. 9, 1975, as amended at 44 FR 37911, June 29, 1979]

§ 97.103 Definitions.

"Act" shall mean the Comprehensive Employment and Training Act of 1973 (Pub. L. 93-203, 87 Stat. 839), as amended.

"Alaskan entity," see Indian or Alaskan entity.

"Allocation" shall mean the distribution of funds to prime sponsors according to the formula contained in this subpart.

"Area of substantial unemployment" shall mean an Indian reservation with a rate of unemployment among Indians of at least 6.5 percent for a period of 3 consecutive months.

"Audit" shall mean a review to determine whether:

(a) Financial operations are properly conducted;

(b) Financial reports are presented fairly;

(c) Applicable laws and regulations have been followed;

(d) Resources have been managed and used in an economical and efficient manner; and

(e) Desired results and objectives have been achieved.

"Audit Standards" shall mean the standards set forth in "The Standards for Audit of Government Organizations, Programs, Activities and Functions" promulgated by the Comptroller General of the United States.

"Capital improvement" shall mean any modification, addition, or restoration which increases the usefulness, productivity, or serviceable life of an existing building, structure, or major item of equipment which is classified for accounting purposes as a "fixed asset" and the recorded value of which is increased by the cost of the improvement and is subject to depreciation.

"Certification" shall mean a legally binding statement that certain requirements have been fulfilled.

"Client community" shall mean the group or groups of people to be served by a program or program activity.

"Consortium" means an agreement pursuant to § 97.111, among Indian tribes, bands, groups, Alaskan native villages and/or public and private nonprofit agencies.

"Contractor" shall mean any person, corporation, partnership, public agency, or similar entity which enters into a contract with a grantee, or with a subgrantee under Section 302 of the Act.

"Construction" shall mean the erection, installation, or assembly of a new facility or a major addition, expansion, or extension of an existing facility, and the related site preparation, excavation, filling and landscaping or other land improvements.

"Department" shall mean the United States Department of Labor including its agencies and organizational units.

"Dependent" shall mean any person for whom the participant has or has assumed, a responsibility for support, and who is:

(a) A relative who is a member of the participant's household.

(b)(1) A parent of the participant head of family;

(2) A child of the participant head of family;

(3) A relative of the participant head of family who is unemployable because of physical or mental disability; or

(c) An individual who:

(1) Is currently a member of the participant's immediate household; and

(2) During the preceding twelve months, earned less than $750.00.

"Disabled veteran" shall mean a person entitled to disability compensation under laws administered by the Veterans Administration or whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty, and shall refer to a person whose Veterans Administration entitlement to disability compensation may have ceased for statutory reasons prior to achieving a vocational goal and whose continuance of service will devolve on the State Vocational Rehabilitation Agency on termination of Veterans Administration sponsorship.

"Division of Indian and Native American Programs (DINAP)". The Department of Labor, Employment and Training Administration division which is in charge of Indian and Native American programs.

"Economically disadvantaged" shall mean a person who is a member of a family:

(a) Which receives cash welfare payments, or

(b) Whose annual income in relation to family size does not exceed the poverty level determined in accordance with criteria established by the Office of Management and Budget (OMB).

"Employing agency" for purposes of public service employment programs shall mean any employer designated by a prime sponsor, subgrantee or by the Secretary of Labor to employ participants pursuant to public service employment programs under the Act. The term shall include an eligible applicant, program agent or other subgrantee when acting as an employer.

"Family" shall mean one or more persons living in a single household who are related to each other by blood, marriage, or adoption except an unmarried member of a household:

(1) Who is 18 or older (or over 21 if attending school), and

(2) Who contributes less than 50 percent of the maintenance of any other member of the family, and

(3) Who receives less than 50 percent of his/her maintenance from the family.

"Federal audits" shall mean audits conducted by the Comptroller General (CG) and U.S. Department of Labor and its agents.

"Federal reservation" shall mean lands as identified by the Bureau of Indian Affairs which have been set aside for Indian tribes and for which the United States is trustee including non-trust land under the tribal jurisdiction.

"FMC" shall mean Federal Management Circular.

"Governor" shall mean the chief executive officer of a State, or his designee. "Grantee" shall mean any entity which receives a grant from the Department to establish or operate any program or activity under this subpart.

"Governing body" shall mean a body consisting of duly elected representatives or a body appointed by a duly elected official which has the authority to provide services to, and to enter into contracts, agreements and grants under this subpart on behalf of the individuals who elected them or elected the appointing official, and which is recognized as having such authority by the appropriate Federal or State agencies.

"Head of family" shall mean that adult person who is regarded as the head of the family by the other members of the immediate family.

"Health care" includes but is not limited to preventive and clinical medical treatment, voluntary family planning services, nutritional services, and appropriate psychiatric, psychological and prosthetic services, to the extent any such treatment or services are necessary to enable a participant to obtain or retain employment under this subpart.

"Indian band" shall mean a community of Indians which is recognized as an Indian entity, and which identifies itself in relationship to a historically recognized tribe, lives in a contiguous geographic area, has been historically recognized as such a community by other communities located in geographic proximity to the subject community, and which has an existing recognized system of selecting representatives who have authority to speak for and on behalf of the band.

"Indian or Alaskan entity" shall mean an Indian tribe, band, or group, or an Alaskan native village or corporation or a private nonprofit Indian or Alaskan organization.

"Indian group" shall mean, except in the case of Alaskan native groups, a community of Indians, other than a band, which is recognized as an Indian entity, and which identifies itself in relationship to a historically recognized tribe, lives in a contiguous geographic area, has been historically recognized as such a community by other communities located in geographic proximity to the subject community, and which has an existing recognized system of selecting representatives who may speak for and on behalf of the group.

"Indian tribe" shall mean a district political community, which exercises powers of self-government and which has historically exercised such powers on behalf of individuals who identify themselves as Indians and who, as a community have been historically recognized as an Indian tribe. Such a tribe must have a system for selecting representatives to speak for and on behalf of the tribe.

"Low-income level" shall mean an annual income level which bears the same relationship to $7,000 as the current year's Consumer Price Index bears to the Consumer Price Index for 1969, rounded to the nearest $1,000.

"Native village" shall mean any tribe, band, clan, group, village, community or association in Alaska, listed in sections 11 and 16 of the Alaska Native Claim Settlement Act (Pub. L. 92-203) or which meets the requirements of that Act and which has been determined by the Secretary of the Interior to be composed of 25 or more natives.

"Placement" shall mean the hiring into unsubsidized employment of an individual referred for a job or interview by a prime sponsor, subgrantee, or contractor when the prime sponsor, subgrantee, or contractor: (a)(1) made arrangements with the employer for referral of the individual; (2) referred an individual who had not been specifically designated by the employer; (3) verified from a reliable source, preferably the employer, that the individual had entered on a job; and (4) recorded the transaction on an appropriate form.

(b) There are three types of placement:

(1) Short-term placements which are expected to have a duration of three days or less;

(2) Mid-term placements which are expected to have a duration from four days to one-hundred-fifty days; and

(3) Long-term placements which are expected to have a duration of more than one-hundred-fifty days.

(c) Placement does not include referral to another program activity, to education or training courses not supported under the Act, or to the Armed Forces.

"Poverty level" shall mean the annual income threshold below which families are considered to live in poverty, as determined in accordance with criteria established by the Director of the Office of Management and Budget.

"Prime Sponsor allotment" shall mean the total amount of funds to be granted to a prime sponsor or eligible applicant for any fiscal year under Section 302 of the Act. The prime sponsor allotment shall include those funds allocated to the grantee on the basis of a formula used by the Secretary and, in addition, any of the Secretary's discretionary funds designated for use by the grantee.

"Prime sponsor" shall mean an Indian tribe, band or group or Alaskan Native village, a consortium, or a public or private agency which has been given a grant by the Department to provide comprehensive manpower services under this subpart.

"Professional work" shall mean work performed by an individual acting in a bona fide professional capacity as described in section 13(a)(1) of the Fair Labor Standards Act.

"Program of demonstrated effectiveness" shall mean a manpower program, such as a program conducted by a community based organization, which has a history of providing manpower services to the economically disadvantaged and has demonstrated the capacity to meet goals at reasonable costs.

"Public service employment" shall mean service normally provided by government and includes, but is not limited to, work such as beautification, conservation, crime prevention and control, education, child care, environmental quality, fire protection, health care, housing and neighborhood improvements, manpower services, park, street and other public facility maintenance, pollution control, prison rehabilitation, public safety, recreation, rural development, solid waste removal, transportation, veteran outreach and other services for human betterment and community improvement. It includes part-time work for individuals who are unable to work full-time because of age, handicap or other similar reasons. It excludes building and highway construction work (except that which is normally performed by the prime sponsor) and other work which inures primarily to the benefit of a private profitmaking organization.

"Rate of unemployment" shall mean the percentage of unemployed persons as determined by the Secretary in the total civilian labor force.

"Secretary" shall mean the Secretary of the Department of Labor, or his delegate, except in §§ 190-198, when "Secretary" shall mean solely the Secretary of the Department of Labor.

"SESA" shall mean a State employment security agency affiliated with the United States Employment Service.

"State reservation" shall mean an Indian reservation recognized as such by the State in which it is located.

"Subgrantee" shall mean any governmental unit or private nonprofit agency which receives a grant from a prime sponsor under Section 302 of the Act.

"Sufficient size and scope" shall describe an Indian tribe, band, group, or Alaskan native village, or a consortium of tribes, bands, groups, or Alaskan native villages composed of at least 1,000 individuals, who are capable of performing the functions necessary to administer a comprehensive manpower program and, who have a governing body as defined under this section, or in the case of a consortium, is capable of performing the functions required of a governing body.

"Supportive or manpower services" shall mean services designed to contribute to the employability of participants, enhance their employment opportunities, assist them to retain employment, or facilitate their movement into permanent unsubsidized employment.

"Underemployed person" shall mean a person who is working part-time but seeking full-time work or a person who is working full-time but whose salary relative to his or her family size is below the low-income level.

"Unemployed person" shall mean:

(a) A person who is without a job and who wants and is available for work:

(1) A person who is without a job is a person who did not work during the calendar week preceding the week in which the determination of his eligibility for participation is made. Except in the case of persons described in paragraphs (a)(2) and (3) of this section, the determination of who wants and is available for work will be made by the prime sponsor or his designee except that persons who have been discouraged from seeking work but who are currently available for work shall not be excluded from eligibility.

(2) If a person is confined in a correctional institution, and if there is a reasonable expectation that release will follow the completion of training within a reasonable time, the person shall be considered unemployed.

(3) A person is not to be considered to be available for work if he/she is without a job because of participation in an ongoing strike or lock-out at the usual place of employment; or

(b) In the case of welfare recipients, an adult who, or whose family, receives money payments pursuant to a State plan approved under the Social Security Act, Title IV (Aid to Families With Dependent Children), or supplemental security income under the Social Security Act, Title XVI (Supplemental Security Income for the Aged, Blind, and Disabled), or would be eligible for such payments according to the standards set forth at 45 CFR Part 233 and 20 CFR Part 416 if both parents were not present in the home, and

(1) Who is available for work, and

(2) Who is either without a job or working in a job providing insufficient income to enable such a person and his/her family to be self-supporting without welfare assistance.

"Unemployment compensation" shall mean the compensation payable in accordance with the provisions of a State or Federal unemployment compensation law, and payments of unemployment assistance in accordance with the provisions of the Disaster Relief Act, Trade Readjustment Allowances in accordance with the provisions of the Trade Expansion Act, and payments of similar assistance or allowances in accordance with the provisions of any other Federal law.

[40 FR 47724, Oct. 9, 1975, as amended at 41 FR 21773, May 28, 1976]

§ 97.104 Eligibility for funds; allocation of funds.

(a) *Eligibility for funds.* (1) Funds shall be allocated by the Secretary only to prime sponsors. The Secretary, before entering into a grant with a prime sponsor applicant, shall be satisfied that such applicant currently has or is able to develop the capability necessary to effectively administer and operate a comprehensive manpower program. This capability shall include at least the ability to maintain the necessary records and accounting system, properly administer government funds, develop employment and training positions, negotiate and administer subgrants and contracts, evaluate program performance and maintain any required personnel merit program. Previous experience in operating an effective multicomponent manpower program is one indication of capability to administer a comprehensive manpower program.

(2) In addition, before entering into grants with prime sponsors which are consortia, public or private nonprofit agencies, or private for profit organizations, the Secretary must be satisfied that the plans submitted by such prime sponsor applicants shall adequately and equitably serve eligible participants.

(b) *A prime sponsor shall be one of the following*—(1) *Independently eligible prime sponsor.* An independently eligible prime sponsor shall be an Indian or Alaskan native entity which has:

(i) A governing body as defined in § 97.103;

(ii) An identifiable resident population of at least 1,000 individuals or which is entitled to an allocation of at least $50,000; and

(iii) The capability of administering a comprehensive manpower program.

In the case of a reservation with more than one tribe, each tribe which is independently eligible in accordance with the criteria of this paragraph shall be entitled to a separate grant.

(2) *Consortium prime sponsor.* Indian or Alaskan native entities which do not meet the criteria for independent prime sponsorship may participate in a consortium.

(i) *Consortium including an independently eligible prime sponsor.* An Indian or Alaskan native entity may enter into a consortium with a prime sponsor eligible under paragraph (b)(1) of this section. The consortium thus formed shall be the prime sponsor, and one member thereof or an entity formed by the members must be designated as the administrative unit and delegated the responsibility for operating the program. Such a consortium may operate in more than one State. The administrative unit must be capable of performing both the functions required of a governing body (see § 97.103, "governing body") and the functions necessary to carry out a comprehensive manpower program.

(ii) *Consortium where no member meets the criteria for independent prime sponsorship.* A consortium may be formed by Indian or Alaskan native entities none of which are eligible for independent prime sponsorship under paragraph (b)(i), *Provided,* That:

(A) All of the members are in geographic proximity to one another; and

(B) The consortium has a resident population of at least 1,000 persons; or

(C) The consortium is entitled to an allocation of at least $50,000.

The consortium thus formed shall be the prime sponsor, and a member thereof, or an entity formed by the members, must be designated as the administrative unit and delegated the responsibility for operating the program. The administrative unit must be capable of performing both the functions required of a governing body (see § 97.103, "governing body") and the functions necessary to carry out a comprehensive manpower program.

(iii) *Consortium involving public or private nonprofit agencies.* An Indian or Alaskan native entity may enter into a consortium with a public or private nonprofit agency. The consortium thus formed shall be the prime sponsor and the public or private nonprofit agency shall be the administrative unit and must be capable of performing the functions necessary to administer a comprehensive manpower program. The consortium need not have a resident population of 1,000 persons. However, the combined allocations for the members must be of such an amount that, in the opinion of the Secretary, it will be possible and feasible to provide comprehensive manpower services to individuals residing within the geographic area of responsibility of the consortium who are in need of such services. Examples of eligible public or private nonprofit agencies are Intertribal Councils, Title I prime sponsors and Tribal Chairmen's Associations.

(3) *Public or private nonprofit agencies as prime sponsors.* (i) In areas where there are significant numbers of eligible participants but where there are no Indian or Alaskan native entities which meet the criteria for independent or consortium prime sponsorship as described in paragraphs (b)(1) and (2) of this section, the Secretary shall enter into agreements with public or private nonprofit agencies capable of effectively administering comprehensive manpower programs, such as prime sponsors under Title I of the Act. To the extent feasible, such designated prime sponsor will meet with the approval of the eligible participants to be served. Such prime sponsors must agree to serve, as equitably as possible, only eligible participants.

(ii) Where there are Indian or Alaskan native entities which do not meet the eligibility criteria for independent prime sponsorship, or who do meet the eligibility criteria but decline to operate a program, the Secretary shall designate a prime sponsor for that area. To the extent feasible, such a designated prime sponsor must be approved by the tribes, bands or groups to be served.

(iii) In order to exercise prior approval:

(A) An Indian or Alaskan native entity must be an Indian tribe, band, group, or Alaskan native village and it must prove that it represents at least

1,000 individuals in the area by providing the Secretary with a list of such members. It must also provide a written explanation of the official procedures utilized to select its chief officials, or

(B) A combination of tribes, bands, groups, or Alaskan native villages, as defined in this subpart, must be able to prove, by providing the Secretary with a list of such members, that, when combined, such combination represents at least 1,000 individuals.

(4) *Private for profit prime sponsors.* Whenever the Secretary determines not to designate Indian tribes, bands, groups, or Alaskan native villages as prime sponsors, he shall, to the maximum extent possible, designate public or private nonprofit agencies. If this is not possible, he may designate private for profit agencies. In such cases, the Indian or Alaskan native entities to be served must agree to such sponsorship.

(c) *Allocation of funds.* In order to insure all Indians and others of native American descent equal accessibility to funds made available under this subpart, funds will be allocated (after making any necessary adjustments based on the appropriation level) using the following formula:

(1) Twenty-five percent of the available funds shall be allocated on the basis of the relative number of unemployed Indians and other native Americans within the prime sponsor's geographic area of responsibility compared to the total number of unemployed Indians and other native Americans in the United States.

(2) Seventy-five percent of the available funds shall be allocated on the basis of the relative number of low-income Indian and other native American families within the prime sponsor's geographic area of responsibility compared to the total number of low-income Indian and other native American families in the United States, except that:

(3) If the factors described above result in the reduction of an area's allocation from its allocation in the preceding fiscal year, the Secretary shall provide each area with at least 90 percent of such area's allotment for the preceding fiscal year, provided sufficient funds are appropriated.

(d) *Data to support formula allocation factors.* In allocating funds, the Secretary shall use whatever data are, in his opinion, the most reliable.

(e) *Unobligated funds.* If, by the end of 9 months of the fiscal year no eligible and willing prime sponsor has been identified by the Secretary in an area, the Secretary shall make such funds available to prime sponsors of his choosing (preferably Section 302 prime sponsors) serving Indians or others of native American descent outside of the area to which such funds were originally allocated but, if possible, such prime sponsor shall be located within the same State as the area to which the funds were originally allocated.

(f) *Publication of allocations.* The allocations made to prime sponsors will be published in the FEDERAL REGISTER as soon as possible after the appropriation for a fiscal year is enacted.

GRANT PLANNING, APPLICATION AND MODIFICATION PROCEDURES

§ 97.110 Grant planning, application and modification procedures in general.

Sections 97.110-97.122 set forth the procedures for obtaining and modifying a grant to operate programs under Section 302 of the Act. Specifically, these sections describe the procedures in the grant award process—from a prime sponsor applicant's initial intent to apply, through the grant application process, to review by the Department, approval or disapproval of the grant, and modification. These sections also describe the functions of prime sponsor Manpower Planning Councils.

§ 97.111 Notification of intent to apply for prime sponsorship; consortium agreements.

(a) For each fiscal year a prime sponsor applicant interested in receiving a grant shall submit to the Secretary, with a copy to the Governor, a notification of intent to apply for prime sponsorship using the Preapplication for Federal Assistance Form, Part I. Notices of intent should be postmarked by March 1. Such notifications should be sent to the Office of National Programs, Division of Indian and Native American Programs, Patrick Henry Building, 601 D Street, N.W., Washington, D.C. 20213.

(b) In addition to the notification of intent, each consortium which desires to be a prime sponsor shall submit to the Secretary a formal consortium agreement which includes the following:

(1) A statement that the agreement has been formed under Section 302 of the Comprehensive Employment and Training Act of 1973;

(2) An identification of the member units which are parties to the agreement; i.e., the name and address of each Indian tribe, band or group or each Alaskan native village that is a member of the consortium;

(3) The geographic area which will be served by the consortium;

(4) The population to be served;

(5) An attached letter from an appropriate official of each member assuring that each party signatory has the necessary authority, including any necessary legal authority, to enter into a consortium agreement (these letters shall be made part of the grant agreement);

(6) A statement choosing one of the following procedures for signing the grant agreement: signing by the chief elected official or chief executive officer of each party to the consortium agreement; or, if specified in the consortium agreement, signing by the chief elected official or chief executive officer of one or more of the parties to the consortium agreement, or by the chief executive officer of the consortium's administrative unit.

(7) A certification that, to the extent consistent with any applicable law, each party signatory to the agreement accepts responsibility for the operation of the program (i.e., that each member of the consortium, rather than the administrative unit, has ultimate responsibility for the program's operation and success);

(8) A description of the powers, functions and responsibilities reserved by the parties to the agreement, the process by which decisions will be made, the process by which each party to the agreement will review and approve the comprehensive manpower plan, and the procedure, if any, by which chief elected officials of the members of the consortium will participate in the planning and operation of the program;

(9) A statement describing by name the administrative unit proposed to operate the program, and delineating the organizational structure, powers, functions and responsibilities proposed to be given to this unit as well as the powers, functions, and responsibilities proposed to be retained by the consortium's members. This administrative unit may be one member of the consortium.

(10) A statement explaining the method by which the individual or individuals in paragraph (b)(6) of this section who will be acting for and on behalf of the tribes, band, or group were elected or selected.

(c)(1) The consortium shall be the prime sponsor.

(2) The consortium's administrative unit shall be delegated all powers necessary to administer the program effectively, including the power to enter into contracts and subgrants and other necessary agreements, to receive and expend funds, to employ personnel, to organize and train staff, to develop procedures for program planning, to evaluate program performance and determine any need to reallocate resources, and to modify the grant agreement through agreement with the Department. Such delegation shall not relieve the members of the consortium of responsibility for the use of funds. The rights of evaluating the program and reallocating funds shall be reserved to the consortium's members.

(d) The consortium agreement shall state that the consortium shall have a period of duration at least equal to that of the grant.

(e) A consortium which submitted a proposed written agreement in the preceding year may, in lieu of executing a new consortium agreement, attest in writing signed by the chief elected official or chief executive officer of each consortium member that details of the proposed agreement for the current year are the same as for the preceding year or that only certain parts are different. If parts of the agreement are different, the complete text of these changes shall be written out in the attestation.

(f) Qualifications support documentation shall also be submitted by prime sponsor applicants along with the notification of intent. These shall include, if applicable:

(1) A statement of the applicant's experience in managing the types of programs and activities allowable under CETA;

(2) A description of past successes in operating programs for Indians or others of native American descent;

(3) Copies of official documents showing the structures of Boards, Area Councils, Advisory Bodies, etc., on which Indians and others of native American descent participate and which are proposed to be involved in the planning and operation of the proposed programs;

(4) A description of linkages with other manpower programs and social service programs;

(5) If possible, resumes of key management staff present and proposed;

(6) Letters of endorsement from other responsible organizations within the same geographic area; and

(7) A list of the Organization's Board members with a short statement indicating how such board members are selected.

§ 97.112 Prime sponsor designation.

Upon receipt of a completed notification of intent, including the qualification supportment documentation, the Secretary shall determine whether or not the applicant is eligible to be designated as a prime sponsor and shall notify the applicant of its designation as a prime sponsor. A grant application package shall be sent to each applicant designated as a prime sponsor.

§ 97.113 Planning process; advisory councils.

(a) *General.* To receive a grant a prime sponsor shall submit a Comprehensive Manpower Plan, as described in § 97.114. The Secretary shall provide assistance to prime sponsors in the development of their plans upon their request.

(b) *Planning process.* The prime sponsor shall establish a planning process for the development of its Comprehensive Manpower Plan. That process shall use the Manpower Planning Council established pursuant to this section and may use other planners and services in the same geographic area. The prime sponsor, in developing his plan, shall take into consideration services being provided by other organizations. The Secretary, in reviewing prime sponsor plans, shall assure that such consideration has been given. The prime sponsor shall make public its plan upon its submission to the Secretary. The prime sponsor may do this by announcing in an appropriate publication that the plan may be reviewed by visiting the prime sponsor's office. The announcement shall include the address of the office.

(c) *Prime sponsor Manpower Planning Council.* (1) Each prime sponsor shall establish a Manpower Planning Council whose membership may include, but not necessarily be limited to: persons from the client community, community-based organizations, the State employment service, education and training agencies, the Bureau of Indian Affairs, the Indian Health Service, and business and labor organizations. The planning council shall include representatives from each member of the consortium. The prime sponsor shall coordinate its planning council with other manpower planning councils in or near the area.

(2) The prime sponsor shall appoint all members of the planning council, designate one member to be chairperson, and provide professional, technical and clerical staff who shall be responsible to the prime sponsor. Costs of meetings, including meeting rooms, travel and per diem may be paid with grant funds; however, no grant funds may be used for salaries or wages paid to planning council members. All meetings must be held within the prime sponsor's designated geographic area of responsibility. The planning council shall make recommendations on program plans, goals, policies and procedures, and shall provide objective evaluations and continuing analyses of needs for employment, training and related services in the prime sponsorship area. The planning council should also have responsibility for comment-

ing on program plans, monitoring program operations, and recommending corrective action. These functions are advisory; however, the prime sponsor should consider the comments when exercising its decisionmaking responsibility.

(d) *Regional planning meeting.* (1) Prime sponsors may hold regional planning meetings of prime sponsors in each Department of Labor regional area.

(2) Such meetings may be held no more than one a year and shall have the following purposes:

(i) To comment on each prime sponsor's plan for the coming year;

(ii) To discuss policies, basic goals, program plans and procedures;

(iii) To develop and make recommendations for more effective coordination of efforts; and

(iv) To select a participant each year to represent all prime sponsors in the region at any meeting on national Indian policy which may be called; the regional group shall inform the Division of Indian and Native American Programs of the name and address of each designee.

(3) Grant funds may be used for holding the annual regional planning meeting.

(4) Where necessary and appropriate, the Division of Indian and Native American Programs shall assist prime sponsors in organizing these meetings.

§ 97.114 Content and description of grant application.

(a) *General.* (1) This section describes the grant application which prime sponsor applicants will use to apply for funds.

(2) Copies of all forms and form instructions are contained in the Forms Preparation Handbook, which shall be provided to prime sponsor applicants by the Department.

(b) *Grant application forms*—(1) *Application for Federal Assistance.* The Application for Federal Assistance identifies the prime sponsor applicant and the amount of funds requested; it provides information concerning the area to be served and the number of people expected to benefit from the program.

(2) *Comprehensive Manpower Plan.* The Comprehensive Manpower Plan is an explanation of how the prime sponsor applicant intends to use grant funds and to coordinate its activities with other manpower programs and services operating within its jurisdiction. It consists of a Program Narrative Description, a Program Planning Summary, a Budget Information Summary, and Program and Occupational Summaries for Public Service Employment, and for consortium prime sponsors, the consortium agreement.

(i) *Program Narrative Description.* The Program Narrative Description is a narrative outline of the proposed program. It identifies and explains the manpower problems within the prime sponsor's jurisdiction, describes proposed program activities and delivery systems to deal with those problems, and projects the results expected from the program. It also includes a detailed description of the proposed program including:

(A) *Objectives and needs for assistance.* (*1*) Policy statement on purpose of program;

(*2*) Description of economic conditions in the area;

(*3*) Description of labor market characteristics in the area;

(*4*) Assessment of skill shortages;

(*5*) Definition of manpower needs;

(*6*) Statement of groups to be served including priority groups; and

(*7*) Statement of goals to be accomplished.

(B) *Results and benefits expected.* (*1*) Statement relating planning results to needs;

(*2*) Description of "other activities" in the Program Planning Summary;

(*3*) Statement of how training and services will provide participants with economic self-sufficiency; and

(*4*) Explanation of how training will lead to employment and enhance career development.

(C) *Approach.* (*1*) Description of planning system and participation of community-based organizations;

(*2*) Statement of strategy for accomplishing goals;

(*3*) Description of each program activity and service;

(*4*) Description of methods to be used to recruit, select and determine eligibility of participants;

(*5*) Description of how persons of limited English language speaking ability will be served, if these represent a significant portion of a prime sponsor's eligible participants;

(*6*) Description of consideration given programs of demonstrated effectiveness, if any;

(*7*) Description of prime sponsor's administrative system;

(*8*) Description of allowance payment system;

(*9*) Explanation of the system for accounting for placements;

(*10*) Explanation of reasons specific delivery agents were selected including area skill centers and justification when other than existing facilities have been selected;

(*11*) Description of coordination with deliverers of manpower services not supported by the Act; and

(*12*) Justification of administrative costs planned.

(D) *Geographic location served.* Description of geographic locations to be served. Each area within a prime sponsor jurisdiction shall be served on as equitable a basis as possible.

(E) *Public Service Employment Programs.* (*1*) Description of target population and significant segments of the population which need special attention;

(*2*) Description of public service needs and priorities;

(*3*) Comparison of proposed jobs to public service needs in the area;

(*4*) Justification of funding and job allocation by area in order to assure that services to all areas are as equitable as possible;

(*5*) Description of strategy for matching jobs to veterans' skills;

(*6*) Description of plan for monitoring services to significant segments; and to priority groups such as disabled and special veterans and welfare recipients;

(*7*) Orientation procedures for participants;

(*8*) Description of determination of rates of compensation if they differ from what is normally paid by employer;

(*9*) Description of actions to insure compliance with personnel procedures and collective-bargaining agreements;

(ii) *Program Planning Summary.* The Program Planning Summary is a quantitative statement of proposed enrollment levels, and expected outcomes for program participants.

(iii) *Budget Information Summary.* The Budget Information Summary is a financial summary of the planned expenditures of program objectives broken out by program activity and cost categories.

(iv) *Public Service Employment Occupational Summary.* The Occupational Summary is a description of proposed public service job opportunities, occupations and wages, including a comparison of proposed PSE wages with wages for similar unsubsidized jobs in the employing agencies.

(v) *Public Service Employment Program Summary.* The Program Summary shows how public employment jobs and funds are proposed to be distributed among the prime sponsor and its proposed subgrantees. It also designates the areas and populations to be served by each distributee.

(vi) *Assurances and Certifications.* The Assurances and Certifications form is a signature sheet on which the prime sponsor assures and certifies that it will comply with the Act, the regulations under the act, other applicable law, and applicable Federal Management Circulars and Office of Management and Budget (OMB) circulars. The Assurances and Certifications form appears in the "Forms Preparation Handbook." Among the assurances and certifications, on the form, to which, if applicable, the prime sponsors must agree, are assurances and certifications that the prime sponsor.

(A) Will comply with the Act and regulations;

(B) Will comply with FMC 74-4, FMC 74-7, OMB Circular A-95 and the Property Handbook for ETA Contractors, as appropriate;

(C) Has legal authority to apply for the grant (Sec. 102(a), 701(a), (9) and (10));

(D) Will comply with the Non-Discrimination Clause;

(E) Will comply with Title VI of the Civil Rights Act of 1964, as appropriate;

(F) Will comply with the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970;

(G) Will comply with the Hatch Act (Sec. 710);

(H) Will prohibit the use of positions under the grant for private gain (Sec. 702(a));

(I) Will provide the Comptroller General and the Secretary with access to records and documents pertaining to programs under the Act (Sec. 713(2));

(J) Will not support religious facilities (Sec. 703(4));

(K) Will maintain required health and safety standards (Sec. 703(5));

(L) Will provide appropriate employment and training conditions with regard to type of work, geographical region and proficiency of the client (Sec. 703(4));

(M) Will provide appropriate workers' compensation to all participants in on-the-job training, work experience and public service employment activities. (Such workers' compensation shall also be provided through insurance for all participants in classroom training, services to participants or other activities.) (Sec. 703(6));

(N) Will use funds under the Act to supplement, rather than supplant funds otherwise available; will prohibit the displacement of employed workers by participants employed under the Act; and will prohibit the impairment of existing contracts for services (Secs. 703(11) and 703(7));

(O) Will provide training which has a reasonable expectation of leading to unsubsidized employment and which provides for the development of participants' employment potential (Secs. 703(9), 105(a)(6), and 703(10));

(P) Will provide training only in occupations which require two or more weeks of pre-employment training, except when there are immediate employment opportunities in other occupations (Secs. 703(9) and 105(a)(6));

(Q) Will comply with the reporting and recordkeeping requirements of the Act and regulations (Secs. 703(12), 311(c));

(R) Will contribute to the occupational development and upward mobility of participants (Sec. 703(13));

(S) Will provide required administrative and accounting controls (Sec. 703(14));

(T) Will provide for the employment and training needs of youth (Sec. 703(15));

(U) Will comply with applicable labor standards pertaining to the work-site and training facilities (Secs. 111(b), 706);

(V) Will administer, or will supervise, the administration of services and activities (Sec. 105(a)(1)(D));

(W) Will provide manpower services to those most in need of them, and will continue funding programs of demonstrated effectiveness (Sec. 105(a)(1)(D));

(X) Will design programs of institutional skill training for skill shortage occupations (Sec. 105(a)(6));

(Y) Will submit a comprehensive plan in accordance with Section 105(a) and compliance with the provisions of Section 105(b);

(Z) Will assist the Secretary in carrying out his responsibilities under Sections 105 and 108 of the Act (Sec. 105(a)(7)).

(vii) *Additional Assurances relating to public service employment programs funded with Section 302 funds.* The prime sponsor applicant must also give assurance that, in public service employment program, it will:

(A) Give special consideration to the filling of jobs which provide prospects for advancement or continued employment by providing complementary training and manpower services in accordance with procedures established in Section 205(c)(4) of the Act;

(B) Give special consideration to unemployed disabled veterans, special veterans and veterans discharged within four years of the date of application in filling public service jobs, and, will engage in special outreach and coordination efforts to serve such veterans (Secs. 205(c)(5) of the Act and Sec. 104(b) of the Emergency Jobs and Unemployment Assistance Act of 1974) (Pub. L. 93-567).

(C) Provide public service jobs, to the extent feasible, which will be in occupational fields within the public or private sector most likely to expand as the unemployment rate recedes (Sec. 205(c)(6));

(D) Will give special consideration, in filing transitional public service jobs to persons most severely disadvantaged in terms of length of unemployment and prospects for finding employment unassisted, but will not authorize the hiring of any person when another person is on layoff from the same or equivalent job (Sec. 205(c)(7));

(E) Will not use funds provided under the Act to hire or permit the hiring of any person to fill a job opening created by the action of an employer in laying off or terminating the employment of any other regular employee not supported under the Act in anticipation of filling such vacancy by hiring an employee to be supported under the Act (Sec. 205(c)(8));

(F) Will consider persons who have participated in other manpower training programs (Sec. 205(c)(9));

(G) Will cooperate with periodic review procedures conducted pursuant to Section 207(a) of the Act (Sec. 205(c)(17));

(H) Attempt to remove artificial barriers to public employment by agencies and institutions receiving financial assistance and, to the maximum extent feasible, eliminate artificial barriers to employment and occupational advancement (Secs. 205(c)(18) and 205(c)(21));

(I) Will maintain or provide linkages with upgrading and other manpower programs to assist persons employed in public employment programs to fulfill their career goals (Sec. 205(c)(19));

(J) Will select all persons employed, except, when necessary, technical, supervisory, and administrative personnel, from among unemployed and underemployed persons (Sec. 205(c)(20));

(K) No more than one-third of the participants may be employed in a bona fide professional capacity except in the case of classroom teachers; the Secretary may waive this limitation in exceptional circumstances (Sec. 205(c)(22));

(L) There will be provision of jobs in each job category which will not infringe upon the promotional opportunities of unsubsidized current employees and provision of jobs only at the entry level in each job category until applicable personnel procedures and collective bargaining agreements have been met (Sec. 205(c)(24));

(M) There will be provision of jobs in addition to those that would otherwise be funded by the prime sponsor without assistance under the Act (Sec. 205(c)(25));

§ 97.115 Comment and publication procedures relating to submission of grant application.

(a) In order to achieve maximum coordination among CETA prime sponsors, each prime sponsor shall, no later than the date of its submission of an application to the Secretary, provide an opportunity for comment on the application to provide for maximum coordination among prime sponsors of comprehensive manpower programs. The prime sponsor shall be under no obligation to make any changes in its plan as a result of any comments.

(b) An opportunity to comment shall be provided to:

(1) The Governor(s);

(2) Officials of appropriate units of general local government; and

(3) Officials of each tribe, band, group, or Alaskan native village to be served.

(c) Comments shall be received by the prime sponsor for 30 days.

(d) The prime sponsor shall acknowledge receipt of a comment and may provide the commenting party with information on any actions or revisions made due to the comment.

(e) All comments and responses shall be transmitted to the Division of Indian and Native American Programs with the grant application or, if the comment is received or responded to after the application submission, separately to the Division of Indian Programs.

§ 97.116 Submission of grant application.

Each prime sponsor shall submit its grant application to the Division of Indian and Native American Programs on or before a date set by the Division.

§ 97.117 Standards for reviewing grant application.

(a) A grant application will be reviewed by the Grant Officer to determine if it meets the requirements of the Act, these regulations, and other applicable law.

(b) The Grant Officer shall also determine whether:

(1) The application is complete;

(2) The needs and priorities identified in the application are supported and justified by the documentation provided by the prime sponsor;

(3) The planned expenditures for program activities are substantiated by documentation;

(4) The performance goals are reasonable in the light of program experience in the same or similar activities and the documentation provided by the prime sponsor;

(5) Appropriate arrangements were made to involve the population to be served and community-based organizations providing services to Indians and others of native American descent in the planning process through representation on the Prime Sponsor Manpower Planning Council or otherwise;

(6) The prime sponsor's selection of the method of delivery of services is supported by adequate documentation and is based on the availability and capability of delivery agents and the appropriateness of services for the population to be served;

(7) Maximum efforts such as monitoring and evaluation have been made to meet the goals of the prior year's plan, if any;

(8) The administrative costs are reasonable and provide, to the maximum extent feasible, for funds to be expended for direct program activities and services, and, if administrative costs are proposed to exceed 20 percent of the cost of non-PSE activities, whether the prime sponsor's documentation has adequately justified such a cost. Administrative costs for PSE may not exceed 10 percent of the funds set aside for PSE;

(9) The prime sponsor has adequate internal administrative controls, accounting requirements, personnel standards, monitoring and evaluation procedures, in-service training and technical assistance, and other such policies;

(10) All appropriate parties have been afforded an opportunity to comment on the comprehensive manpower plan;

(11) The extent to which existing services and facilities proposed to be used are appropriate and/or the justification for not using existing services and facilities is adequate and reasonable;

(12) The composition of the Manpower Planning Council is appropriate;

(13) The planned services and activities adequately described;

(14) The programs of institutional training are designed for occupations in which skill shortages exist;

(15) Appropriate arrangements have been made for coordination with other employment and training programs funded by the Department of Labor.

§ 97.118 Application approval; grant agreement.

(a) A designated prime sponsor's application for a grant shall be approved if it meets the requirements of the Act, the regulations promulgated under the Act, other applicable law, and if the Director of Indian and Native American Programs determines that the prime sponsor has demonstrated maximum efforts to meet the goals of the prior year's plan, if the prime sponsor has run such a prior plan.

(b) An application for a grant from a consortium shall be approved if, in addition to the requirements of paragraph (a) of this section, an adequate consortium agreement has been submitted to the Director of Indian and Native American Programs.

(c) The prime sponsor and the Governor shall be notified of the approval of the application. If an application is approved, the Secretary shall provide the prime sponsor with a grant agreement, consisting of the Grant Signature Sheet and the Assurance and Certifications form, and the Comprehensive Manpower Plan.

(d) The Grant Signature Sheet shall specify the amount obligated by the Department to the grantee, and the duration of the grant and shall be signed by the Grant Officer and a duly constituted official of the prime sponsor.

§ 97.119 Application disapproval.

(a) An application for a grant shall be disapproved if it fails to meet any requirement of the Act, the regulations promulgated under the Act, or any other applicable law.

(b) No application shall be disapproved solely because of the percentage of total funds devoted to an allowable manpower program activity.

(c) No application for a grant shall be disapproved until:

(1) The prime sponsor has been notified that its application fails to meet a requirement of the Act, regulations promulgated under the Act, or other applicable law; and

(2) The prime sponsor is provided with suggestions on corrective steps to remedy any defect in the application; and the prime sponsor has been provided with at least 30 days to remedy the defect, but has failed to do so.

(d) When an application is disapproved, a notice of disapproval shall be transmitted to the prime sponsor and the Governor, accompanied by a statement of the grounds of the disapproval and a notice that a hearing may be requested by the prime sponsor pursuant to §§ 97.190-97.198.

§ 97.120 Use of alternate prime sponsors; services by the Secretary.

If an application is not filed as required, or is denied, or if a grant is terminated in whole or in part during a fiscal year, the Secretary may make provision for any funds released thereby to be used by another prime sponsor (preferably by an existing Section 302 prime sponsor) to service the area originally to be served by the first prime sponsor, or the Secretary may serve such an area directly or may allocate such funds to another area where, in the opinion of the Secretary, they can be more effectively utilized.

§ 97.121 Modification of grant agreement.

(a) A Grant Signature Sheet shall be used as the instrument to modify a grant agreement when a change is proposed in the terms and the conditions of the grant.

(b) When the terms or conditions of the grant are changed, the prime sponsor shall also submit revised portions of its Comprehensive Manpower Plan to the Secretary to specifically identify the changes.

(c) When the terms or conditions of a grant are changed, the comment procedures described in § 97.115 shall be followed.

(d) When the prime sponsor allocation is obligated in increments, each subsequent obligation shall require a modified grant signature sheet signed by a representative of the prime sponsor and the Grant Officer.

§ 97.122 Modification of Comprehensive Manpower Plan.

(a) *General.* There are three types of modifications to Comprehensive Manpower Plans which may be proposed by the prime sponsor. The Secretary may also require modifications as described in paragraph (e) of this section or certain key information as described in paragraph (f).

(b) *Major comprehensive manpower plan modification.* (1) When a comprehensive manpower plan modification meets one of the following conditions, it will be considered to be a major plan modification:

(i) For grants of $100,000 or less:

(A) The cumulative transfer of funds among program activities or cost categories exceeds $5,000.

(B) The total number of individuals to be served, planned enrollment levels for program activities, planned placement terminations, or individuals to be served within significant client groups is to be increased or decreased by 15 percent or more.

(ii) For grants of over $100,000:

(A) The cumulative transfer of funds among program activities or cost categories exceeds $10,000 or 5 percent of the total grant budget, whichever is greater.

(B) The total number of individuals to be served, planned enrollment levels for program activities, planned placement terminations, or individuals to be served within significant client groups is to be increased or decreased by 15 percent or more.

(2) A prime sponsor desiring a major modification shall submit a revised Program Planning Summary and Budget Information Summary and a narrative explanation of the proposed changes to the Grant Officer and shall provide for comment pursuant to § 97.115. If the proposed changes result in changes to the narrative, rewritten portions of the narrative shall also be submitted. The Grant Officer shall notify the prime sponsor of final approval or of tentative disapproval within 10 days of receipt of the proposed modification. Final Grant Officer action on disapproval shall be taken within 30 days of the receipt of the proposed modification.

(c) *Minor plan modification.* A prime sponsor may make any change in its Program Planning Summary and Budget Information Summary which is not set out in paragraph (b) of this section without prior approval but must show any such change in the first quarterly progress report submitted to the Division of Indian and Native American Programs after the change has been made. At the same time this report is submitted, an updated Program Planning Summary and Budget Information Summary must also be submitted. Only those lines and columns affected by the modification shall be shown.

(d) *Narrative modification.* When a prime sponsor proposes a change in a portion of its narrative plan which does not reflect a change on the Program Planning Summary, it may submit such a modification to the Director, Division of Indian and Native American Programs for approval and incorporation into its approved plan. A narrative modification must be submitted prior to the following items of narrative being changed:

(1) Any change in the allowance payment system, including, but not limited to, any change in the condition for waiving allowances.

(2) Any substantial change in the program design.

(e) *DOL required modification.* After consultation with a prime sponsor, a modification may be required by the DOL if necessary to assure compliance with applicable regulations and the approved plan. A modification shall also be required to describe any changes in the individuals authorized to disburse funds and/or sign grant documents for and on behalf of the prime sponsor. DOL may execute unilateral modifications to extend the period of operations of a grant. Such extensions shall be followed by a subsequent jointly signed modification which will incorporate into the grant any changes in the program resulting from such an extension.

(f) Prime sponsors must notify the Division of Indian and Native American Programs whenever there is a change in a project leadership, address, name, or other significant information.

PROGRAM OPERATION

§ 97.130 Program operation in general.

Sections 97.130-97.142 set out the operation requirements programs under Section 302 of the Act.

§ 97.131 Basic responsibilities of prime sponsors.

A prime sponsor shall be responsible for:

(a) Compliance with plans and assurances;

(b) Compliance with this subpart,

(c) Establishing priorities for granting assistance, taking into account the needs of the economically disadvantaged, unemployed and underemployed residing within its jurisdiction;

(d) Designing program operating activities which are, to the maximum extent feasible, consistent with every participant's fullest capabilities and will lead to employment opportunities enabling every participant to become economically self-sufficient and will contribute to the occupational development or upward mobility of every participant;

(e) Advising all participants of their rights and responsibilities prior to entering the program; and

(f) Making maximum efforts to comply with the provisions of the Program Planning Summary.

§ 97.132 Eligibility for participation in a Title III, Section 302, program.

(a)(1) An Indian or other person of native American descent who is economically disadvantaged, unemployed, or underemployed may participate in a program offered by the prime sponsor provided persons have their residence within the area covered by the prime sponsor's comprehensive plan.

(2) The term "residence" shall refer to an individual's permanent dwelling place or home. In determining whether a particular place is an individual's dwelling place or home, the intention of the individual is the key element. An "address" is not necessarily the same as a dwelling place or home.

(b) Permanent resident aliens who meet the eligibility requirements of paragraph (a) of this section may participate in a program if such participation is consistent with Indian tribal law or at the option of the prime sponsor.

(c) A Title II participant who meets the eligibility requirements of paragraph (a) of this section for whom maximum efforts have been made to find unsubsidized employment, or for whom supplemental training is needed as a prerequisite to a job, may be transferred into a Section 302 program without an intervening period of unemployment. A Title II participant may also be concurrently enrolled in a Section 302 program to receive services as an adjunct to the participant's Title II public service employment position (sec. 205(c)(14) and (19)).

(d) Indians and persons of native American descent who meet the requirements of paragraph (a) of this section and who are identified by such terms as "landless" or "terminated" are eligible to participate. Such groups and individuals include, but are not limited to: the Klamaths in Oregon, the Lumbees in North Carolina, the Passamaquoddys and Penobscots in Maine, and the Eskimos and Aleuts in Alaska.

(e) Prime sponsors will give special consideration to the needs of qualified special and disabled veterans and veterans of the Vietnam-era who meet the requirements of paragraph (a) of this section.

(f) No special consideration because of kinship or family relationships with tribal or other officials may be given to persons applying for participation.

(g) Prime sponsors shall make the final determination as to who shall participate, provided that such participants meet the requirements of paragraph (a) of this section. Enrollment from outside the prime sponsor's jurisdiction shall only be done after consultation with the prime sponsor who has jurisdiction over the outside area and after advance approval by the Division of Indian and Native American Programs, which shall be assured that the circumstances justify such an action.

[40 FR 47724, Oct. 9, 1975, as amended at 41 FR 21774, May 28, 1976]

§ 97.133 Types of manpower program activity available.

(a) A prime sponsor may provide any type of manpower program activity which is consistent with the purposes of the Act. Such program activities may include, but are not limited to, the development and creation of job opportunities, and training, education and other services needed to enable an individual to secure and retain employment at his or her maximum capacity.

(b) A prime sponsor shall, consistent with these regulations, determine the operating levels and program activities in its area.

(c) A prime sponsor may, except as required in paragraph (c)(8) of this section, run manpower programs which include, but are not limited to:

(1) *Classroom training.* (i) This program activity may include training conducted in an institutional setting designed to provide participants with the technical skills and information required to perform a specific job or group of jobs. It may also include training designed to enhance the employability of participants by upgrading basic skills, through the provision of courses in, for instance, remedial education (such as manpower training, as provided by Indian Action Team Programs), training in the primary language of persons of limited English-speaking ability, or English-as-a-second-language training.

(ii) Any occupational training, for example, Indian Action Team Program skill training, shall be designed for occupations in which skill shortages exist (Sec. 105(a)(6)) and for which there is reasonable expectation of employment (Sec. 703(10)). To make such determinations the prime sponsor should use available community resources such as local SESA offices and the National Alliance of Businessmen.

(iii) Allowances and other benefits as provided in § 97.134 may be paid to participants receiving training or education, except that such allowances may not be paid for any course having a duration in excess of 104 weeks.

(2) *On-the-job training.* (i) On-the-job training (OJT) is training conducted in a work environment designed to enable individuals to learn a bona fide skill or qualify for a particular occupation through demonstration and practice or both. Such training may be conducted on a "hire first, train later" basis, or on a basis of ultimate placement with an employer other than the training organization. OJT may involve individuals at the entry level of employment or be used to upgrade individuals into occupations requiring higher skills. OJT shall be designed to lead to the maximum development of participants' potentials and to their economic self-sufficiency.

(ii) Inducements to employers. Prime sponsors may provide payments or other inducements to public or private employers for bona fide training and related costs provided that payments to employers organized for profit are made only for recruiting, training and supportive services over and above those normally provided by the employer. Direct subsidization of wages for participants employed by private employers organized for profit is not an allowable expenditure.

(iii) Labor organization consultation. Appropriate labor organizations should be consulted in the design and conduct of on-the-job training programs at worksites governed by collective bargaining agreements.

(3) *Public Service Employment (PSE).* (i) Public service employment is subsidized employment with public and private nonprofit employers. This program activity may also include training, manpower services and other services incident to such public service employment. Program operations and allowable Federal costs applicable to PSE are found at 29 CFR Part 96, Subpart C and §§ 98.12 and 98.13, respectively.

(ii) Participants' benefits. Wages and benefits for persons in a public service employment program shall be as provided in 29 CFR 96.34.

(4) *Work experience.* (i) Work experience is a short-term work assignment with a public or private nonprofit employing agency designed to enhance the future employability of a youth or to increase the potential of adults in obtaining a planned occupational goal. Work experience shall be a subsidized employment activity, however, it may not be used as a substitute for public service employment. Prime sponsors shall describe in their narrative the basic design of their work experience programs, including the characteristics of the participants who will participate in a work experience activity, the objectives, duration, and expected outcomes of the activity.

(ii) Work experience activities for youth may include part-time employment for students attending school, short-term employment for students during the summer, short-term employment for youth in transition from school to a job setting; short-term employment for recent graduates; and short-term or part-time employment for youth who have no definite occupational goal and for whom no training or job opportunity immediately exists.

(iii) Work experience activities for adults may include part-time or short-term employment for the chronically unemployed, retired persons, recently discharged military individuals, institutional residents and inmates, and others who have not been working in the competitive labor population for extended periods of time. In addition, it may include part-time or short-term employment while a definite occupational goal, training or job opportunity is being developed.

(iv) Program outcomes for work experience participants may include return to school; enlistment in the military services; and enrollment in manpower training aimed at placement in subsidized or unsubsidized employment.

(v) Work experience in the private for profit sector is prohibited.

(vi) Participant benefits. Each participant in a work experience activity shall receive wages. Wages shall be based on such factors as the type of work performed, the geographical region of the program, and the skills and proficiency of the participant, provided that a participant's hourly wage of pay shall be at least the higher of the minimum rate prescribed by State or local law for similar employment or the minimum hourly wage set out under Sec. 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Participants in work experience activities shall be provided workers' compensation and other fringe benefits at the same level and to the same extent as other similarly situated employees of the employer. They shall also receive appropriate manpower services.

(5) *Services to participants.* Such services are designed to provide supportive and manpower services which are needed to enable individuals to obtain employment or retain employment or to participate in other manpower program activities leading to their eventual placement in unsubsidized employment. Services to participants may include, but are not limited to:

(i) *Manpower Services.* (A) Outreach;

(B) Intake and assessment;

(C) Orientation;

(D) Counseling;

(E) Job development;

(F) Job placement; and

(G) Transportation.

(ii) *Supportive Services.* (A) Health care and medical services;

(B) Child care;

(C) Residential support;

(D) Assistance in securing bonds;

(E) Family planning services, provided that a participant wants such services and such services are not a prerequisite for participation in, or receipt of, any other services or benefits from the program;

(F) Legal services; and

(G) Loans to participants to enable them to accept employment.

(iii) *Post-placement services.* Manpower and supportive services may be provided for up to 30 days to participants who have been placed in unsubsidized employment to aid them in retaining employment.

(iv) *Participant benefits.* Allowances as described in § 97.134 may be paid to a participant enrolled in services to participants when this activity is a part of an activity described in § 97.133(c) and when this activity is a participant's only scheduled one.

(6) *Other manpower activities.* (i) The comprehensive manpower plan must describe the basic design of other proposed manpower activities and the objectives to be accomplished thereby. Such activities may include, but are not limited to:

(A) Removal of artificial barriers to employment;

(B) Job restructuring;

(C) Revision or establishment of merit systems; and

(D) Development and implementation of affirmative action plans.

(ii) Participant benefits. Allowances as described in § 97.134 may be paid to a participant enrolled in other manpower activities when such activities are a component of another activity or when such activities are regularly scheduled as the only activities in which the participant is enrolled.

(7) *Combined activities.* (i) A participant enrolled in any activity funded under this subpart may be enrolled simultaneously in any other activity as a component of the participant's primary activity. The primary activity is the activity in which the participant is enrolled for more than 50 percent of the scheduled time.

(ii) Participant benefits. A participant enrolled in a primary activity for which wages are paid, and simultaneously in an activity for which allowances are payable, may be paid wages for all hours of participation.

(8) *Special programs for persons of limited English-language speaking ability.* When persons of limited English-language speaking ability constitute a significant portion of a prime sponsor's program participants, the

prime sponsor shall establish operating procedures to:

(i) Teach occupational skills in their primary language for occupations which do not require a high proficiency in English;

(ii) Develop new employment opportunities for them;

(iii) Develop opportunities for their promotion if they are in an existing employment situation;

(iv) Disseminate appropriate information and provide job placement and counseling assistance in their primary language;

(v) Conduct training and employment programs in their primary language; and

(vi) Conduct programs designed to increase their English-language speaking ability.

§ 97.134 Training allowances.

(a) *The payment system.* Each prime sponsor, in order to assure accountability and uniformity, to facilitate necessary coordination with other programs, and to ensure prompt and efficient payment shall maintain a standard system for payment of allowances. In selecting the delivery system, the prime sponsor should give consideration to the use of agencies such as the Unemployment Insurance System which have experience in operating an allowance payment system. The payment system shall include the following elements:

(1) Determination of entitlement to allowances and computation of the amount to be paid;

(2) Issuance and distribution of payments;

(3) Maintenance of payment records and preparation of required reports;

(4) Detection and collection of overpayments; and

(5) Arrangements with other agencies to obtain necessary information to minimize unauthorized payments. This shall include arrangements with:

(i) The State employment security agency for verification of unemployment compensation benefits;

(ii) Local welfare agencies for verification of public assistance payments;

(iii) Training facilities for submittal of payment requests and certification of attendance; and

(iv) Other units of government for verification of training allowances under other Federal, State or local programs.

(b) *Eligibility for allowances.* Allowances may be paid to participants for time spent in classroom training, other activities as specified in § 97.133(c)(6), or manpower services such as: assessment, orientation, counseling, and transportation. However, allowances for participation in manpower services or other activities may be provided only if such participation is on a regularly scheduled basis as described in the approved comprehensive manpower plan. No allowances will be paid for any course under the classroom training activity having a duration in excess of 104 weeks (Sec. 111(a)).

(c) *Application for unemployment compensation.* As appropriate, participants should be encouraged to apply for unemployment compensation benefits as defined in § 97.103, if they are not already receiving such benefits.

(d) *Basic allowances.* A basic allowance for one week shall equal, at least, the higher of:

(1) The minimum hourly wage prescribed by State or local law for employment in the prime sponsor's area multiplied by the number of hours of participation for which the trainee attends or is absent for good cause; or

(2) The minimum hourly wage set out under Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, multiplied by the number of hours of participation for which the trainee attends, or is absent for good cause; except that for the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa, the provisions of the Fair Labor Standards Act applicable to those areas shall pertain. To compute the number of hours of participation, the prime sponsor may count time spent in classroom training, services to participants, or other activities as specified in § 97.133(c) (5) and (6).

(e) *Dependents' allowances.* Dependents' allowances of $5 per week for each dependent over two, up to a maximum of four additional dependents, for a total maximum of $20 for six or more dependents, shall be provided to participants in activities for which basic allowances are paid. Participants eligible for dependents' allowances who also receive dependents' allowances from other sources shall not be precluded from receiving dependents' allowances.

(f) *Incentive allowances for persons receiving public assistance or who are in institutions.* (1) Incentive allowances, at the rate of $30 per week, in lieu of basic allowances, shall be paid to participants receiving public assistance, or whose needs or income are taken into account in determining such public assistance payments to others. Incentive allowances may be reduced pro rata for absences from program activities without good cause.

(2) Incentive allowances, in lieu of basic allowances, but not in excess of such allowances, may be paid to institutionalized persons, including prison inmates participating in program activities for which allowances are paid. The determination as to whether such allowances will be paid, and the amounts thereof, shall be made by the prime sponsor in consultation with officials of the institutions. In the case of prison inmates, all or part of such payments may be held in reserve and delivered upon the participant's release from the institution.

(g) *Additional allowances.* Additional reasonable allowances may be paid to participants to cover extraordinary costs associated with participation. The circumstances in which additional allowances will be paid shall be described in the comprehensive manpower plan.

(h) *Adjustments in allowances.* (1) The basic allowance shall be reduced, on a weekly basis, by the amount of unemployment compensation payments, if any, received by the participant.

(2) No basic allowance to which an individual may otherwise be entitled shall be diminished in any respect because of receipt of a separation payment provided under any collective bargaining agreement.

(3) An individual's basic allowance may be adjusted upward to the degree that the local cost of living exceeds the national norm, if conditions for such increases are described in the comprehensive manpower plan.

(4) Periodic increases to the basic allowance may be provided as an incentive to participation when such increases are described in the comprehensive manpower plan.

(i) *Waivers of allowance payments.* (1) The Secretary may permit a prime sponsor to waive the payment of all or part of the basic allowance for all participants in a specific course or project under conditions described in the comprehensive manpower plan if:

(i) The waiver will not have the effect of denying participation to individuals who could not participate without receipt of the basic allowance; or

(ii) The waiver will increase the number of individuals served; or

(iii) The waiver will otherwise promote the purposes of the Act; and

(iv) All participants for whom basic allowances are waived are so notified in writing.

(2) Individual waiver of the basic allowance, if provided for in the comprehensive manpower plan, may be granted if:

(i) The waiver is at the written request of the participant; and

(ii) All of the funds allocated in the program planning summary for basic allowances have been obligated and training opportunities are still available.

(3) The dependents' allowance may not be waived except when the participant's entire basic allowance is waived.

(4) Allowance payments may not be waived solely because a participant is a veteran and receives benefits through the Vietnam Era Veteran's Readjustment Assistance Act, as amended.

(j) *Repayments.* Prime sponsors may require participants to repay the amount of any overpayment of allowances under this part except that, if the overpayment was made without fault on the part of the participant, and if such recovery would be against equity and good conscience or would otherwise defeat the purposes of the program, repayment shall not be required. Any overpayment not repaid when requested may be set off against any future allowance or other benefits to which the participant may become entitled.

§ 97.135 Wages; minimum duration of training and reasonable expectation of employment.

(a) *Wages.* (1) Participants in public service employment programs shall be paid wages, as described at 29 CFR 96.34.

(2) Participants in work experience shall be paid wages pursuant to § 97.133(c)(4)(vi).

(3) Participants in on-the-job training shall be compensated by the employer at such rates, including periodic increases, as are reasonable, considering such factors as the nature of the industry, geographical region, and trainee proficiency. In no event shall the rate be less than the highest of:

(i) The minimum wage rate specified in Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended;

(ii) The State or local minimum wage for the most nearly comparable employment covered by the State or local minimum wage law;

(iii) The prevailing rates of pay for persons employed in similar positions by the same employer; or

(iv) The minimum entrance rate for inexperienced workers in the same occupation in the establishment or, if the occupation is new to the establishment, the prevailing entrance rate for the occupation among other establishments in the community or area; or

(v) The minimum rate required by an applicable collective bargaining agreement.

(4) For hours spent in the production of goods or services, the rate of compensation to be paid to participants by employers, public or private, shall be specified in a written agreement between the training or employing facility and the prime sponsor.

(b) *Duration of training.* An individual shall not be referred for training in an occupation which requires less than two weeks of preemployment training unless there are immediate employment opportunities available in that occupation (Sec. 703(8)).

(c) *Reasonable expectation of employment.* An individual shall not be referred to training unless the prime sponsor determines, after using available and appropriate community resources, that there is a reasonable expectation of employment for the individual in the occupation for which he or she is being trained.

§ 97.136 General benefits and working conditions for program participants.

(a) Each participant in an on-the-job training, work experience or public service employment program under this subpart shall be assured of appropriate workers' compensation, health insurance, unemployment insurance and other benefits at the same levels and to the same extent as other employees in the same employment situation, and to the same working conditions and promotional opportunities. Each participant in a classroom training program and participants enrolled in services to clients and other activities shall be assured appropriate insurance comparable to the coverage which would be provided by workers' compensation if they were eligible for such compensation. The cost of this insurance shall be charged to administration.

(b) No prime sponsor, subgrantee or employing agency may select, reject, or promote a participant based on that individual's political affiliation or beliefs.

(c) No program under this part may involve the construction, operation, or maintenance of any facility used or to be used for sectarian instruction or as a place of religious worship.

§ 97.137 Prime sponsor review.

Each prime sponsor shall establish a procedure for resolving any issue arising between it and a participant. This procedure shall include an opportunity for an informal conference and for a prompt determination of any issue which has not been resolved by the conference. The procedure shall also include a notice to the participant setting forth the ground for any adverse action proposed to be taken by the prime sponsor against a participant and giving the participant an opportunity to respond. Determinations made as a result of this process shall be provided to the participant in writing along with a copy of the procedures by which the participant may appeal the determination as set forth in §§ 97.190-97.199.

§ 97.138 Non-Federal status of participants.

Participants in programs under this subpart are not Federal employees and are not subject to the provisions of law relating to Federal employment including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employment benefits.

§ 97.139 Retirement benefits for participants.

(a) Expenditures may be made from program funds for payments under the Social Security Act.

(b) Expenditures for retirement fund payments for participants may be made if:

(1) Payments are for retirement benefits that are part of a consolidated package, including such benefits as health insurance and workers' compensation, if separation of the benefits is not allowed;

(2) Payments are for participants who are immediately hired as regular employees as defined by the employer (that is who attain regular employee status, although their salary is subsidized by program funds);

(3) Payments are for participants whom the employing agency or another employer intends to hire into permanent jobs at some future date, provided that:

(i) Payments are made into and retained in a reserve account, and are not paid into the retirement fund until the participant has acquired regular employee status; and

(ii) If regular employment occurs with other than the employing agency, retirement fund payments may be allowed only if the participant is employed within the State, and the retirement benefits are portable; or

(4) Payments are for retirement benefits required by Federal, State, or local law, or for retirement plans set up by State or local law which do not permit the exclusion of participants from coverage.

§ 97.140 Training for lower wage industries; relocation of industries.

(a) No participant may be enrolled in any program or activity in any low wage industry in jobs for which prior skill or training is typically not a prerequisite for hiring and in which labor turnover is high.

(b) No funds under this subpart may be used to assist in the relocation of any establishment from one area to another unless the Secretary determines that the relocation will not result in an increase in unemployment in the original location or in any other area where a business enterprise or a company related to the relocating establishment conducts business operations (Sec. 704(a)).

§ 97.141 Prime sponsor contracts and subgrants.

(a) Contracts. Contracts may be entered into between the prime sponsor and any party, public or private, for purposes set forth in an approved comprehensive manpower plan.

(b) Subgrants. Subgrants may be entered into only between the prime sponsor and units of State and local general government, Indian government, public agencies or nonprofit organizations.

(c) Prime sponsor responsibility for development, approval, and operation of contracts and subgrants. The prime sponsor is responsible for the development, approval and operation of all contracts and subgrants and shall require that its contractors and subgrantees adhere to the requirements of the Act, the regulations promulgated under the Act, and other applicable law. It shall also require contractors and subgrantees to maintain effective control and accountability over all funds, property and other assets covered by the contract or subgrant (Sec. 105(a)(1)(B)).

(d) Cancellation. If a contractor or subgrantee does not comply with any requirement of the Act, the regulations promulgated under the Act, and other applicable law, the prime sponsor shall cancel the contract or subgrant. The prime sponsor may cancel for noncompliance with additional conditions established in the contract or subgrant.

(e) Continuity of service when contract or subgrant is cancelled. If a contract or subgrant is cancelled, the prime sponsor shall develop procedures for assuring continuity of service to participants and provide adequate notice to affected staff of the change.

(f) Contracts and subgrants termination dates. The prime sponsor may not enter into contracts or subgrants which extend past the termination date of the prime grant.

(g) Indian prime sponsors may also require that subgrantees and contractors agree to hire qualified Indians to the maximum extent feasible and in accordance with 42 USC 2000e-2(i) to provide the services called for by the subgrant or contract.

§ 97.142 Cooperative relationships between prime sponsor and other manpower agencies.

(a) Each prime sponsor, to the extent feasible, shall establish cooperative relationships or linkages with other manpower and manpower-related agencies in its jurisdictions, especially with agencies operating programs funded through the Department.

(b) Prime sponsors, to the extent feasible, shall notify the appropriate apprenticeship agencies of training activities in apprenticeable occupations.

(c) Each prime sponsor, in providing services to recipients of Aid to Families With Dependent Children (AFDC), shall coordinate such services with the local sponsor of the Work Incentive Program, if any, to insure the maximum benefit to the participants.

GRANT ADMINISTRATION

§ 97.150 Grant administration in general.

(a) Sections 97.150 through 97.170 contain requirements relating to the administration of grants by prime sponsors.

(b) The Secretary will provide each prime sponsor with technical assistance guides to enable them to comply with the requirements of §§ 97.150 through 97.190.

§ 97.151 Payment.

Advance payments will be made by either a letter of credit or by U.S. Treasury check to prime sponsors that demonstrate the willingness and ability to establish procedures which will minimize the time between the transfer of funds to them and their disbursement of such funds.

§ 97.152 Letter of credit.

Grants will be financed by means of a letter of credit when the following conditions are met:

(a) The grant is for $250,000 or more;

(b) A continuing relationship has existed between the Secretary and the prime sponsor for at least 12 months;

(c) The prime sponsor can assure the Secretary that the timing and amount of drawdowns will be as close as possible to disbursement needs;

(d) The prime sponsor's accounting system meets the recordkeeping and reporting requirements of this subpart.

§ 97.153 Payment by Treasury check.

(a) A prime sponsor which is not paid by letter of credit will be paid by Treasury check. The Secretary will determine whether such payment will be made on advance or reimbursement basis. In making such a determination, the Secretary will consider the adequacy of the prime sponsor's accounting and recordkeeping system with regard to items 3b and 3c of Attachment J of FMC 74-7.

(b) Advance by Treasury check will use predetermined payment schedules or, upon the request of the prime sponsor provided that such request is agreed to by the national office, Division of Indian and Native American Programs.

§ 97.154 Financial management systems.

(a) Each prime sponsor, subgrantee and contractor shall maintain a financial management system which will provide accurate, current and complete disclosure of the financial transactions under each grant, subgrant or contract activity, and will enable each prime sponsor, subgrantee or contractor to evaluate the effectiveness of program activities and meet the reporting requirements of this subpart.

(b) Each prime sponsor, subgrantee and contractor shall maintain its financial accounts so that the reports required by the Secretary may be prepared therefrom.

(c) To be acceptable for audit under this subpart a Report of Federal Cash Transactions and a Financial Status Report shall be:

(1) Current as of the cut-off date of the audit;

(2) Taken directly from or linked by worksheet to the prime sponsor's books of original entry; and

(3) Traceable to source documentation of the unit transaction.

(d) In cases in which the prime sponsor's records are unauditable, the auditor shall submit a letter to the contracting officer within ten days of a determination of unauditability delineating the reason therefor and delineating the action required to place the records in auditable condition.

§ 97.155 Audit and evaluation.

(a) The Secretary of Labor, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the prime sponsors and their subgrantees and contractors which are pertinent to grant programs for the purpose of making surveys, audits, examinations, excerpts and transcripts (Sec. 713(2)).

(b) The Secretary shall survey, audit or examine, or arrange for the survey, audit or examination of prime sponsors and their subgrantees and contractors by certified or licensed public accountants. Such surveys, audits, or examinations shall normally be conducted annually and shall be conducted at least once every 2 years.

(c) Surveys and audits will conform to the standards for Audit of Government Organizations, Programs, Activities, and Functions, issued by the Comptroller General of the United States and technical assistance guides issued by the Secretary. Surveys, audits or examinations arranged for by the Secretary will conform, at a minimum, to the first element of the Comptroller General's Standards: An audit to determine (1) whether financial operations are properly conducted; (2) whether the financial reports are fairly represented; and (3) whether the available information indicates that the prime sponsor, contractor, or subgrantee has not complied with applicable laws, regulations and administrative requirements. Federal audits will also, from time to time, include reviews of the economy and efficiency and/or program results of CETA programs. A report including appropriate recommendations will be issued to the Employment and Training Administration. Existing audit systems, where acceptable under the Comptroller General's Standards, will be used to the maximum possible extent (Sec. 713(1)).

(d) Each prime sponsor shall arrange for an independent audit of each of its contractors and subgrantees at least once every two years. Audits may be conducted by the prime sponsor, by State and local government audit staffs, or by certified public accountants and audit firms under contract to the prime sponsor. All audits performed or arranged for by the prime sponsor shall be conducted in accordance with the provisions of paragraph (c) of this section and shall not be subject to prior approval by the Division of Indian and Native American Programs.

(e)(1) Upon making a new grant or a significant increase in the funding level of an ongoing grant, the Assistant Secretary for Employment and Training may request the Assistant Secretary for Administration and Management to conduct a preliminary audit survey to evaluate the adequacy of the prime sponsor's accounting system and internal controls as established by these regulations.

(f)(1) On the basis of the findings, conclusions and recommendations of the audit survey or audit, the prime sponsor will be advised in writing of what action, if any, is needed to satisfy Department of Labor requirements.

(2) If major deficiencies are disclosed, the grant may be suspended. In the event of suspension, the grantee will be given a specified amount of time (not to exceed six months) in which to take corrective action. If the

prime sponsor fails to take corrective action within the time allowed, the grant will be terminated.

(g)(1) Audit reports shall be written in the format prescribed by the Department of Labor Audit Program or the Comptroller General. Previous audit reports considered relevant and the full text of any sponsor's comments will be included as an appendix to the report.

(2) Department of Labor audit reports will be distributed to the Secretary by the appropriate Assistant Regional Director of Audit.

(3) Prime sponsors shall respond in writing to the findings, conclusions and recommendations of an audit report when notified to do so by the Department of Labor. Unless an extension of time is expressly granted by the Secretary, the response shall be submitted to the Director, Division of Indian and Native American Programs, with a copy to the appropriate Assistant Regional Director of Audit within thirty calendar days from the date of Department of Labor notification to the prime sponsor of the findings and recommendations.

(4) The prime sponsor may take exception to particular audit findings and recommendations. The rationale for such exceptions should be included in the prime sponsor's response. The response should point out any corrections already made and any action which is proposed and the estimated completion date of such action.

(5) The Department of Labor will consider the prime sponsor's response when determining if specific expenditures should be disallowed. The Director, Division of Indian and Native American Programs, will notify the prime sponsor in writing of any determination to allow or disallow expenditures.

§ 97.156 Reporting requirements in general.

Each prime sponsor shall submit periodic reports which will be used by the Secretary to assess its performance. These reports are the Program Status Summary, Financial Status Report, the Summary of Participant Characteristics Report, and the Report of Federal Cash Transactions (Secs. 313(b) and 713). Detailed descriptions of these forms are in the Forms Preparation Handbook.

§ 97.157 Quarterly Progress Reports.

(a) Quarterly Program Status Summary and Financial Status Summary reports are the quarterly progress reports which will be used to measure accomplishments in achieving objectives stated in the Program Planning Summary. They will also constitute the prime sponsor's statement of costs incurred and contain its certification of the correctness of the costs reported.

(b) A prime sponsor shall include the following items in the program status summary report together with a comparison of the same items as they appear in the program planning summary for the period of the report:

(1) The total number of participants served;

(2) The total number of participants placed in unsubsidized employment on termination from the project and the number entering school, other training or military service;

(3) The level of participation in program activities;

(4) The distribution of total accrued expenditures by cost categories; and

(5) The distribution of services among significant segments of the population being served by the program.

(c) If the Secretary determines that performance goals are not being achieved in accordance with the plan, he may request additional information from the prime sponsor, including reasons for the failure to achieve the goals.

(d) The quarterly progress reports will also permit prime sponsors to report on objectives and accomplishments other than those established by the Secretary. If a prime sponsor elects to include these other activities in its report, they will be used by the Secretary in his evaluation of the performance of the prime sponsor's program.

(e) The prime sponsor will prepare quarterly progress reports at the end of Federal fiscal year quarters and will send them to the Secretary soon enough to be received no later than thirty days after the end of each quarter. If a prime sponsor's grant period ends on a date other than the last date of a Federal fiscal year quarter, a fifth report, covering the entire grant period, shall be submitted.

(f) Copies of quarterly progress reports shall be sent by the prime sponsor to the appropriate Governor(s).

(g) The Secretary may require submittal of quarterly progress reports by prime sponsors more frequently than quarterly in cases of major deviation from the program planning summary.

(h) Specific procedures for meeting these reporting requirements will be furnished to each prime sponsor in the Forms Preparation Handbook.

§ 97.158 Summary of Participant Characteristics Report.

(a) The Summary of Participant Characteristics Report contains aggregate characteristics data on all participants in the program. The summary is to be submitted to the Secretary with the quarterly progress reports.

(b) The summary will include characteristics data for those who terminated from the program and for those who entered unsubsidized employment.

(c) The summary will also aggregate wages before enrollment in the program and after placement and show the median wage of participants for these two categories.

§ 97.159 Report of Federal Cash Transactions.

(a) Each prime sponsor shall submit, as indicated below, a report of Federal Cash Transactions. The report will be used by the Secretary to monitor cash advances and to obtain disbursement information. This report shall be submitted monthly by each prime sponsor under Section 302 receiving annual grants totalling $1 million or more and quarterly by all other prime sponsors (Sec. 713(1)).

§ 97.160 Reallocation of funds.

(a) *General.* The Secretary may reallocate funds from one prime sponsor to another under the circumstances and in accordance with the procedures described in this section (Sec. 702(b)).

(b) *Reallocation based on nonperformance.* (1) When the Secretary determines, through review of the prime sponsor's reports, monitoring or auditing, that the prime sponsor's performance may be inadequate or that it may have failed to comply with the Act or regulations, he shall review the situation with the prime sponsor to determine if a reduction in the grant can be mutually agreed to. If it can, the Secretary shall proceed to modify the grant to reduce the total funding level and to reallocate, at his discretion, the funds made available by this action. If such an action cannot be mutually agreed to, the Secretary shall give due notice and opportunity for a public hearing as provided in § 97.196.

(2) If the Secretary thereafter decides to reallocate the prime sponsor's funds, he shall:

(i) Revoke the prime sponsor's plan for the area, in whole or in part;

(ii) Make no further payments to the prime sponsor, to the extent he deems necessary; and

(iii) Notify the prime sponsor of the amount of funds to be returned from unexpended funds paid to the grantee during that fiscal year.

(3) The Secretary shall then reallocate the funds, preferably to another prime sponsor in the State, or to the State, to service the area which was served by the first prime sponsor, or the Secretary may serve the area directly (see § 97.120).

(c) *Reallocation based on need.* (1) In some circumstances the Secretary may determine that the unobligated portion of a prime sponsor's grant should be reallocated to a prime sponsor in another area because the funds are not needed where they were originally allocated. Such reallocations may be made only after the ninth month of the fiscal year for which the grant was made.

(2) Before reallocating funds pursuant to paragraph (c)(1) of this section, the Secretary must determine that:

(i) The prime sponsor's plan will be carried out without expending all the funds previously made available for that plan; and

(ii) The excess funds cannot reasonably be expected to be needed in the following grant period.

(d) *Reallocation.* When the Secretary determines that funds should be reallocated pursuant to paragraph (c) of this section, he will:

(1) Notify the prime sponsor and the appropriate Governor(s) of the proposed removal of funds from the grant and the reasons therefor. The notice shall also invite the prime sponsor and the Governor(s) to submit comments on the proposed reallocation. Such comments must be submitted to the Secretary within thirty days of receipt of the notice.

(2) After reviewing any comments submitted by the prime sponsor and/or Governor(s), the Secretary will notify them of his decision. A final decision to reallocate funds of a prime sponsor applicant will be published in the FEDERAL REGISTER.

(3) In reallocating on the basis of need, the Secretary shall first consider the need for additional funds by other prime sponsors within the same State. A decision to increase a prime sponsor's grant with reallocated funds will not be made without prior consultation with the prime sponsor as to how the funds will be expended and prior notification to the Governor. Such a decision will be published in the FEDERAL REGISTER with an announcement of the prime sponsor(s) receiving additional allocations and the amounts.

§ 97.161 Allowable Federal costs.

(a) *General.* Costs may be incurred only to increase the employability of participants. Except as modified by these regulations, Federal funds granted under the Act may be expended only for purposes permitted under the provisions of Part 1-15 of Title 41 of the Code of Federal Regulations. 41 CFR 1-15.2 applies to commercial and nonprofit organizations. 41 CFR 1-15.3 applies to educational institutions, and 41 CFR 1-15.7 applies to State and local governments. Allowable costs include both direct and indirect costs.

(1) *Direct costs.* Direct costs under this subpart are those which can be specifically identified with activities under this subpart. The method of apportioning direct costs among projects, program activities, or cost categories must be documented. Procedures for classifying and charging direct costs must be uniform in order to preclude overcharges.

(2) *Indirect costs.* Indirect costs are those incurred jointly for activities under this subpart and other activities on behalf of the recipient, and those not readily assignable to specific activities under this subpart. Indirect costs must be supported by a cost allocation plan and/or an indirect cost proposal, which shall include an indirect cost pool.

(3) *Policies and procedures.* Cost allocation plans and indirect cost proposals shall be developed and approved in accordance with the cost principles and procedures set forth in 41 CFR Part 1-15. The DOL must approve in advance all prime sponsors' indirect costs to be charged to grants under this subpart. The reasonableness of indirect costs will be determined pursuant to 41 CFR Part 1-15.7 (FMC 74.4).

(b) *Restriction on use of funds.* (1) Federal funds used for public service employment programs under this subpart shall not be used for the acquisition of or the rental or leasing of administrative supplies, equipment, materials or real property, either as a direct cost or an indirect cost. Training materials, work tools, uniforms or other equipment ordinarily provided by the employer to his regular employees, and which are for the benefit and ownership of the participants, may be considered fringe benefit costs for public service employment participants. If such supplies are not ordinarily furnished to regular employees, the prime sponsor may not use grant funds designated for wages and fringe benefits to finance them (Sec. 208(a)(7)).

(2) No funds granted under this subpart may be used, directly or indirectly, as a matching contribution for the purpose of obtaining Federal funds under any other law of the United States which requires a contribution from the grantee in order to receive such funds, unless this is authorized under that law. Funds granted under this subpart, however, may be used as a matching contribution in order to obtain additional funds under this subpart.

(3) No funds grants under this subpart may be used, either directly or indirectly, for purposes of obtaining consulting or technical assistance subgrants or contracts without prior written approval of the Division of Indian and Native American Programs. Requests for approval of such subgrants or contracts shall contain a detailed explanation as to the need for such consultant or technical assistance services and a reason why such services cannot be provided without such subgrants or contracts. The request shall also include a resume of the qualifications of the proposed consulting or technical assistance organization. The total proposed costs of such services must be reasonable in relation to the total administrative costs of the prime sponsor's grant.

(c) *Expenditures for repairs, maintenance and capital improvements and construction.* (1) Funds under this subpart may not be expended for new construction except as part of a training program in a construction occupation (including additions to existing facilities), but may be expended for building repairs, maintenance and capital improvements to existing facilities. These costs must relate to a facility or building which is used primarily for programs under the Act (Sec. 702(b)). All expenditures for repairs, maintenance, capital improvements, construction activities, purchase or renovation of real property, and acquisition of non-expendable property, must be approved by the Grant Officer in writing in advance of the expenditure (Sec. 702(b)).

(2) Training costs for projects in construction occupations may include such items as, instructor salaries, training tools and books, and allowances or wages to participants (if appropriate) but may not include materials used in construction or land acquisitions. Construction costs for training programs shall be allowable only when such construction would not normally be performed by an outside contractor.

(d) *Allowable cost categories.* Allowable costs shall be reported against the following cost categories: Administration; wages; training; fringe benefits; allowances; and services.

(1) Costs are allowable to a particular cost category to the extent of benefits received by such category.

(2) All grantees are required to plan, control, and report expenditures against the cost categories.

(e) *Classification of costs by category.* The following principles shall be followed in classifying costs by cost category:

(1) Participants' wages shall be charged to wages;

(2) Participants' fringe benefits shall be charged to fringe benefits;

(3) Allowances paid to program participants shall be charged to allowances;

(4) Training costs consisting of goods and services which directly and immediately affect program participants shall be charged to training. Goods and services considered to have direct and immediate impact on participants are limited to those actually involved in the participant training process itself as opposed to those which are supportive of that process. For examples of training-related costs which may and may not be charged to training, see paragraph (f)(4) of this section.

(5) Supportive and manpower services costs consisting of goods and services which directly and immediately affect program participants shall be charged to services. Goods and services considered to have direct and immediate impact on participants are limited to those actually involved in the process of providing participants with supportive and manpower services as opposed to those which are ancillary to that process. For examples of service-related costs which may and may not be charged to services, see paragraph (f)(5) of this section.

(6) Allowable costs which do not fall into any of the above classifications will be charged to administration.

(7) When contractors bill the grantee with a single unit charge containing costs which are chargeable to more than one cost category, the grantee will endeavor to obtain the detail necessary to charge these costs to the proper cost categories. If this cannot be done, an estimate of the breakdown of the single charge among cost categories shall be obtained. Any profit (or

loss) should be prorated among all the affected cost categories.

(8) Classification of equipment costs present special problems since many items of equipment can be used for various purposes. In the case of multiuse equipment there must be a proration of cost or, if there is a predominant usage relating to one cost category, a charge shall be made to that category.

(9) Any single cost such as staff salaries and/or fringe benefits which is properly chargeable to more than one cost category should be prorated among the affected categories.

(f) *Examples of costs properly chargeable to each of the cost categories*—(1) *Wages.* All wages paid to participants receiving on-the-job training in public or private nonprofit organizations, and all wages paid to participants in transitional subsidized employment and in work experience will be allowed and be chargeable to program costs. (Wages paid to participants while receiving on-the-job training from a private employer organized for profit are not allowable costs.)

(2) *Fringe benefits.* Allowable fringe benefit costs for participants include, but are not limited to, the following: annual, sick, court and military leave pursuant to an approved leave system; employer's contribution for social security, employers' life and health insurance plans; unemployment insurance, workers' compensation insurance; retirement benefits provided such benefits are granted under an approved plan; and such training materials, work tools, uniforms, or other equipment which may be charged to the fringe benefits category under Public Service Employment programs, in accordance with 29 CFR 98.12(b)(1).

(3) *Allowances.* All allowances paid to program participants pursuant to § 97.134 of these regulations shall be charged to this cost category.

(4) *Training.* Training costs include, but are not limited to, the following: salaries and fringe benefits of personnel engaged in providing training, books and other teaching aids; equipment and materials used in providing training to participants; and that part of entrance and tuition fees which represent instructional costs having a direct and immediate impact on participants. The following are examples of costs not properly chargeable to training: General and administrative costs of the training facility; supervision, clerical support, and training (skill maintenance and upgrading) of instructors; staff travel; rents, utilities, and other facility costs; supplies and equipment not used directly in the course of participant training; transportation of participants to training sites; and costs of processing allowance payments. The compensation of individuals who both instruct and supervise other instructors must be prorated among the training and administration cost categories on the basis of time records or other equitable means. Similarly, tuition fees and the costs of supplies used in the course of both participant instruction and other activities should be pro-rated among the benefitting uses.

(5) *Services.* (i) Services includes, but is not limited to, supportive and manpower services, as set forth in § 97.133(d)(5).

(ii) Supportive services include child care, health care and medical and dental services, residential support, assistance in securing bonding, and family planning.

(iii) Manpower services include outreach, intake and assessment, orientation, counseling, job development, and job placement.

(iv) Services costs include, but are not limited to, salaries and fringe benefits of personnel engaged in providing services to participants; and that part of single unit charges for child care, health care, and other services which represent only the costs of services directly beneficial to participants. Transportation of participants is properly chargeable to services only where it cannot reasonably be considered to be merely incidental to providing employment, training, and services which themselves directly benefit participants. For example, if rural participants have to be transported over long distances in order to reach work or training sites, particularly where no public transportation service is available, the cost of chartering or purchasing a bus may be charged to services.

(v) The following are examples of costs not properly chargeable to services: general and administrative costs of the services provided; supervision, clerical support, staff training, staff travel, rent and other facility costs; and costs of supplies, materials, and equipment not used directly in providing services to participants.

(6) *Administration.* Costs properly chargeable to administration shall be limited to those necessary to effectively operate the program. They should not generally exceed 20 percent of the total planned costs for all program activities other than public service employment unless the program narrative description sets forth an explanation of how such additional costs have been determined and a detailed documentation to support that amount. Further, the larger the total allocation a prime sponsor received, the lower the total percentage of funds devoted to administration should be. The restriction on the use of funds for administration in public service employment programs is set forth in 29 CFR 96.36.

(i) Supportive services are comprised of general and administrative costs, overhead, and similar cost groupings representing the general management and support functions of an organization as well as secondary management and support functions at the bureau or division level. Included are salaries and fringe benefits of personnel engaged in executive, fiscal, personnel, legal, audit, procurement, data processing, communications, transportation, materials, supplies, equipment, and office space costs, and staff training and morale. The value of space owned by a prime sponsor or a member of a consortium and used for purposes of a section 302 program may be an allowable cost chargeable to the grant if the cost is approved in advance as reasonable by the Division of Indian and Native American Programs.

(ii) Direct program costs which are not an integral part of training and services provided participants are comprised of goods and services which neither contribute to the management and support functions of an organization nor directly and immediately affect participants. Included are direct program salaries and fringe benefits of supervisory and clerical personnel, program analysts, labor market analysts, and project directors. In addition, all costs of materials, supplies and equipment which are not solely identifiable with the provision of training and services to participants are included here as are all costs of space and staff travel identifiable with direct program effort. Some examples of administrative costs included here are the salary of a clerical assistant to an instructor, that part of an instructor's salary representing the time he spends supervising other instructors, desk-top supplies used in participant training and in general office administration, a job developer's travel costs, rent, depreciation, or maintenance of classroom training facility, consultants' services under contract, not involving direct training or services to participants, and costs of providing technical assistance to contractor and subgrantee staff.

(iii) Services normally chargeable to administration when performed by staff personnel shall be charged to wages, or fringe benefits, as appropriate, when performed by program participants. When this is done, costs shall be charged to the subsidized employment program activities, either transitional or for work experience.

(7) *Travel regulations.* The following travel regulations apply to all prime sponsors:

(i) *Advance approval.* All grantee, subgrantee or contractor payments for travel by employees, consultants, and members of boards or councils shall be approved in advance by the responsible official designated by the grantee.

(ii) *Out-of-State travel.* All out-of-State travel (in the case of multistate grantees, all travel out of the geographic area of the grant) must be specifically approved in writing in advance by the Division of Indian and Native American Programs.

(iii) *Travel outside the geographic area of the grant* must be for programmatic purposes, viz.: job development, contract negotiations, administration of subgrants and contracts, etc. Travel outside the geographic area of the grant for nonprogrammatic purposes, viz.: training sessions, conferences, board meetings, consultation, etc., must be specifically approved in writing, in advance by the Division of Indian and Native American Programs.

(iv) *Travel policies.* All grantees, subgrantees and contractors are required to follow the travel policies set forth in the Standardized Government Travel Regulations (SGTR). Where a grantee, subgrantee or contractor has more restrictive requirements, the latter shall be followed.

(v) *Mileage costs.* Mileage costs for the use of privately owned automobiles shall be paid in accordance with prevailing rates in the community. In no event, however, shall the rates exceed those provided for in the SGTR.

(vi) *First-class travel.* Less than first-class travel accommodations shall be used in all instances except when:

(A) These accommodations do not exist or are not available within a reasonable time;

(B) Less than first-class travel would result in high overall costs because of required routing, time urgency, baggage differential, or other factors; or

(C) The physical condition of the traveler or other extenuating circumstances require the use of first-class travel.

(vii) *Per diem rates.* (A) Per diem rates shall be established by the prime sponsor based on the following factors:

(*1*) Cost of meals and lodging in the locality;

(*2*) Availability of meals and lodging at temporary duty locations without charge, or at nominal costs; and

(*3*) Extended duty at a place where the traveler may obtain accommodations at reduced rates.

(B) In no event shall per diem rates exceed the maximum established by the Standardized Government Travel Regulations for travel within the Continental United States and by the Civilian Personnel Per Diem Bulletin (Department of Defense) for travel within or to Hawaii and Puerto Rico.

[40 FR 47724, Oct. 9, 1975, as amended at 40 FR 58854, Dec. 19, 1975]

§ 97.162 Allocation of allowable costs among program activities.

The program activities against which program costs shall be planned, controlled and reported upon are: Classroom training, on-the-job training, subsidized transitional employment, subsidized work experience, services to participants, and other activities. The cost categories under each of these activities are defined in § 97.161(d). The extent to which these cost categories are chargeable to specific program activities is set forth below:

(a) *Classroom training.* Cost categories chargeable are: administration; training; allowances; and services.

(b) *On-the-job training.* Cost categories chargeable are: administration; training; services; wages; and fringe benefits (with public or private nonprofit employers only).

(c) *Transitional public service employment.* Cost categories chargeable are: administration; wages; fringe benefits; services; and training.

(d) *Work experience.* Cost categories chargeable are: administration; training; services; wages; and fringe benefits.

(e) *Service to participants.* Cost categories chargeable are:

(1) *Allowances.* This includes all allowances paid to participants registered for training for short period between components.

(2) *Services.* This includes all manpower and supportive services including post-placement services which are not part of another activity and which are provided to participants by a prime sponsor, contractor or subgrantee.

(3) *Administration.* This includes all allowable administrative costs directly associated with this activity and a pro rata share of each prime sponsor's administrative costs not directly associated with any specific program activity.

(f) *Other activities.* Cost categories chargeable are: administration; training; allowances; and services.

§ 97.163 Basic personnel standards for prime sponsors.

(a) Prime sponsors shall maintain adequate personnel policies and practices. Such policies and practices may be in accordance with existing procedures. Where no policies or practices exist, standards for purposes of this program shall be developed and made known to all staff hired under a Section 302 grant.

(b) Nepotism.

(1) No prime sponsor, subgrantee or contractor shall hire, or permit the hiring of, any person in a staff position, nor shall they accept any person as a participant, if a member of the person's immediate family is employed in an administrative capacity by the prime sponsor, subgrantee or contractor. For the purposes of this section, the term "immediate family" means wife, husband, son, daughter, mother, father, brother, and sister. The term "staff position" includes all positions such as instructors, counselors, administrators, and suppliers of training and services. The term "employed in an administrative capacity" includes those persons who have overall administrative responsibility for a program, including: all elected and appointed officials who have any responsibility for the obtaining of and/or approval of any grant funded under this subpart as well as other officials who have any influence or control over the administration of the program, such as the project director, deputy director and unit chiefs; and persons who have selection, hiring, placement, or supervisory responsibilities for public service employment participants. The Secretary may waive this requirement if adequate justification is received that no other persons within the subgrantee's jurisdiction are eligible and available for participation or employment by the prime sponsor.

(2) Where a tribal policy regarding nepotism exists which is more restrictive than this policy, the prime sponsor shall follow the tribal rule.

§ 97.164 Adjustments in payments.

(a) If any funds are expended by a grantee, subgrantee, contractor, or employing agency in violation of the Act, the regulations or grant or contract conditions, the Secretary may make necessary adjustments in payments on account of such expenditures. He may draw back unexpended funds in order to assure that they will be used in accordance with the purposes of the Act, or to prevent further unauthorized expenditures, and he may withhold funds otherwise payable under the Act in order to recover any amount expended for unauthorized purposes in the current or immediately preceding fiscal year (Sec. 702(b)).

(b) No action taken by the Secretary under paragraph (a) of this section shall entitle the grantee to reduce program activities or allowances for any participant or to expend less during the effective period of the contract or grant than those sums called for in the Comprehensive Manpower Plan. Any such reduction in expenditures may be deemed sufficient cause for termination.

§ 97.165 Termination of grant.

(a) If a prime sponsor violates or permits a subgrantee, contractor or an employing agency to violate the regulations, or grant terms or conditions which the Secretary has issued or shall subsequently issue during the period of the grant, the Secretary may terminate the grant in whole or in part unless the grantee causes such violation to be corrected within a period of thirty days after receipt of notice specifying the violation or the determination of the Secretary, pursuant to a hearing under §§ 97.190–97.198, if a hearing has been held.

(b) In emergency situations when it is necessary to protect the integrity of any program established under the Act, the Secretary may, without a prior hearing, suspend payment and withdraw such unexpended funds as he deems appropriate under the grant and make alternate temporary arrangements to carry out the grant program. In such situations, the Secretary shall notify the grantee of his action and set a date for a prompt hearing on the matter.

(c) Termination shall be effected by a notice of termination which shall specify the extent of the termination and the date upon which the termination becomes effective. Upon receipt of notice of termination, the grantee shall:

(1) Discontinue further commitments of grant funds related to the terminated portion of the grant;

(2) Promptly cancel all subgrants, agreements, and contracts related to the terminated portion of the grant;

(3) Settle, with the approval of the Secretary, all outstanding claims arising from such termination; and

(4) Submit, within a reasonable period of time after the receipt of the notice of termination, a termination settlement proposal which shall include a final statement of all unreimbursed costs related to the terminated portion of the grant, but which, in case of terminations under paragraph (a) of this section, shall not include the cost of preparing a settlement proposal.

§ 97.166 Grant closeout procedures.

(a) The closeout of a grant is the process by which DOL determines that all applicable administrative actions and all of the required work under the grant have been completed by the grantee. The following procedures apply to grant closeouts:

(b) Upon the completion of the grant period, or at any termination date determined by the Secretary, the grantee shall:

(1) Refund immediately to the Secretary any unencumbered balance of cash drawn down from the letter of credit or advanced by Treasury checks. Amounts to be included in the refund checks are detailed in the Forms Preparation Handbook;

(2) Submit the following reports as described in the Forms Preparation Handbook, to the Division of Indian and Native American Programs:

(i) A final report of Federal Cash Transactions,

(ii) Grantee's Assignment of Refunds, Rebates and Credits,

(iii) Bank Statement-Special Bank/Financial Account,

(iv) Cancellation/Adjustment Fidelity Bond,

(v) List of possible claimants for unclaimed checks cancelled or payment stopped,

(vi) Grant Closeout Tax Certification,

(vii) Government Property Inventory,

(viii) Inventory Certificate,

(ix) Grantee's Release form,

(x) Final quarterly Planning and Budget Summary Reports, and

(xi) A final Summary of Participant Characteristics Report.

(c) Upon closeout, the Division of Indian and Native American Programs will insure that:

(1) Prompt payment is made to the prime sponsor for reimbursement of allowable costs under the grant;

(2) After the final reports are received, a settlement is made for any upward or downward adjustments which should be made in the Federal share of the costs;

(3) The letter of credit is cancelled; and

(4) The final program and fiscal audits are performed as soon as possible after the termination of the grant.

§ 97.167 Maintenance and retention of records.

(a) Grantees are required to maintain records on each program participant. The following types of information shall be recorded:

(1) Personal identifying information;

(2) Residence;

(3) Work history of the participant;

(4) Program activities in which the participant participated;

(5) Supportive services received by the participant; and

(6) Status of each participant at termination from the program. Specific items, instructions, and definitions are contained in the "Forms Preparation Handbook."

(b) The following provisions shall apply with regard to the retention of records pertaining to grants:

(1) Financial records, supporting documents, statistical records and all other pertinent records shall be retained for a period of three years.

(i) Records shall be retained beyond the three-year period if audit findings have not been resolved.

(ii) Records for nonexpendable property acquired with grant funds shall be retained for three years after the disposition of such property.

(iii) When grant program records are transferred to or maintained by the Secretary, the three-year retention requirement will not be applicable to the prime sponsor.

(2) The retention period shall start from the date of submission of the annual or final expenditure report, whichever applies to the particular grant.

(3) The substitution of microfilm copies in lieu of original records may be authorized by the DOL upon the request of the prime sponsor.

(4) The DOL may request prime sponsors to transfer grant records to the Department's custody when it is determined that such records have long-term retention value. However, suitable arrangements to avoid duplicate record-keeping shall be made if the Department and prime sponsor both need such records.

(5)(i) The names of all participants supported under the Act are considered public information.

(ii) Other information regarding applicants, project participants, or their immediate families, which may be obtained through application forms, interviews, tests, reports from public agencies or counselors or any other source, shall be made available to the public by the grantee to the same degree it makes such information available about its own employees in the governmental jurisdiction. Without the permission of the applicant or participant, such information which is not normally made available to the public or the grantee's own employees in the governmental jurisdiction shall be divulged only as necessary for purposes related to the performance or evaluation of the grant under the Act to persons having responsibilities under the grant, including those furnishing services to the project under subgrant or contract, and to governmental authorities to the extent necessary for the proper administration of law.

(iii) The names of all individuals employed in staff positions under the Act are considered public information. A grantee shall make other information available to the public pertaining to individuals employed in staff positions under the Act in the same manner and to the same extent as such information is made available on its regular employees. A grantee shall make other information available to the public on individuals employed in staff positions by the administrative unit of a consortium, who are not also employed by a member jurisdiction, in accordance with the policy of the member jurisdiction which has the least restrictive policy.

(iv) Irrespective of any other provision in these regulations, this paragraph (b)(5) is applicable to participants and staff for programs in Fiscal Year 1975, as well as thereafter.

§ 97.168 Program income.

(a) The prime sponsor shall not be held accountable for interest earned on grant-in-aid funds pending their disbursement for program purposes.

(b) Prime sponsors shall turn over to DOL any interest earned on advanced grant-in-aid funds.

(c) Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with the provisions of the Property Handbook for ETA Contractors or the ETA Property Handbook for OMB Circular A-102 Eligible Grantees, whichever is appropriate.

(d) Royalties received from copyrights and patents during the grant period shall be retained by the grantee and added to the funds already committed to the program. After termination or completion of the grant, the royalties in excess of $200 received annually shall be returned to DOL.

(e) All other program income earned during the grant period shall be retained by the grantee and, in accordance with the grant agreement, shall be added to funds committed to the project and be used to further program objectives.

(f) The prime sponsor shall record the receipt and expenditure of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of grant project transactions.

§ 97.169 Procurement standards.

The standards to be used for the procurement of supplies, equipment, and other materials and services with grant funds are those described in the

Property Handbook for ETA Contractors or the ETA Property Handbook for OMB Circular A-102 Eligible Grantees, whichever is appropriate.

§ 97.170 Nondiscrimination and equal employment opportunities.

(a)(1) No person, on the grounds of handicap (as defined in paragraph (f) of this section), sex, age, or political affiliation, shall be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity funded in whole or in part under this subpart (Section 703(1); Vocational Rehabilitation Act, Section 504).

(2) The prohibition against age discrimination does not prohibit the establishment of training and employment programs under this subpart designed to serve the legitimate needs of specific age groups.

(b) When the Secretary determines that a grantee has failed to comply with the requirements of this section, he shall notify the grantee of the noncompliance and request the grantee to comply. If the grantee fails or refuses to comply, the Secretary may, after notice and opportunity for hearing, terminate financial assistance and:

(1) May refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) May exercise the powers and functions provided to him by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)); or

(3) May take other actions as may be provided by law.

(c) The Secretary shall enforce the provisions of this section with regard to discrimination on the basis of sex in accordance with Section 602 of the Civil Rights Act of 1964.

(d) This section shall not affect any other legal remedy that a person may have if that person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any program or activity under this subpart.

(e) The grantee shall be responsible for assuring that no discrimination prohibited by this section occurs in any program for which it has responsibility, and shall establish an effective Equal Employment Opportunity (EEO) program for this purpose. The grantee may, in establishing this program, assign the responsibility for administering its EEO program to one individual and require subgrantees and contractors to prepare affirmative action plans. The grantee shall include in its Comprehensive Manpower Plan a description of its EEO program and affirmative action plans required of its subgrantees and contractors, including the procedures established for monitoring these activities.

(f) The term "handicapped individual" means any individual who has a physical or mental disability which constitutes or results in a substantial handicap to employment, but who can reasonably be expected to benefit in terms of employability from an activity under this subpart.

ASSESSMENT AND EVALUATION

§ 97.180 Assessment and evaluation in general.

(a) Sections 97.180 through 97.184 set forth the assessment and evaluation responsibilities of the prime sponsor and of the Secretary. The prime sponsor shall establish an adequate program mechanism for examining, in a systematic fashion, the success of its program in meeting the goals contained in the Comprehensive Manpower Plan and for measuring the effectiveness of its program in resolving manpower problems identified in that plan (Sec. 703(14)).

(b) The Secretary shall assess prime sponsors to determine whether they are carrying out the provisions of this subpart and of their approved Comprehensive Manpower Plans.

§ 97.181 Responsibilities of the prime sponsor.

(a) The prime sponsor shall submit periodic reports on the performance of its program pursuant to §§ 97.150-97.170.

(b) The prime sponsor shall establish internal program management procedures (Sec. 703(14)). These procedures shall be used by the prime sponsor to monitor day-to-day operations, to review periodically the performance of the program, and to measure the results of the program in terms of participants, program activities, and the community. The objective of these procedures shall be the improvement of overall program management and effectiveness.

(c) The prime sponsor shall monitor all program activities to determine whether the assurances and certifications it made in its Comprehensive Manpower Plan are being met and to identify problems which may require it to take corrective action in order to assure such compliance. The prime sponsor shall monitor by internal evaluative procedures, by examination of program data, or by any special analysis or checking it deems necessary and appropriate (Sec. 703).

(d) The prime sponsor shall cooperate with the Secretary's evaluations and assessments by providing, if requested, special reports on program activities and operations, the findings of its evaluations of effectiveness, and access to its records and program operations.

(e) When the prime sponsor finds that operations are not performing as planned, it shall take appropriate corrective action.

§ 97.182 Responsibilities of the Secretary.

(a) The term "assessment" refers to the Federal review of the plans and performance of individual prime sponsors, and the term "evaluation" refers to the study of the overall effectiveness and impact of programs and activities under the Act.

(b) The Secretary shall assess whether the prime sponsor is operating in accordance with its Comprehensive Manpower Plan, whether it is carrying out the purposes and provisions of the Act and these regulations, and whether it has demonstrated maximum efforts to implement the provisions in its prior year's comprehensive manpower plan.

(1) The Secretary shall assess the prime sponsor's program and activities in order to determine its compliance with the assurances and certifications of its comprehensive manpower plan.

(2) The assessment shall be conducted by the review of required periodic reports, supplemental special reports from the sponsor, and prime sponsor records, by selective on-site reviews including, in certain instances, the investigation of allegations or complaints, or by other examinations as appropriate.

(3) Assessments may also be conducted for the purpose of offering to prime sponsors technical assistance or recommendations for corrective action.

(c) The Secretary shall provide for the continuing evaluation of all programs and activities conducted pursuant to the Act. Such studies shall include the examination of:

(1) Cost in relation to effectiveness;

(2) Impact on communities and participants;

(3) Implications for related programs;

(4) Extent to which the needs of various age groups are met;

(5) Adequacy of mechanisms for the delivery of services;

(6) Opinions of participants about the strengths and weaknesses of the programs;

(7) Relative and comparative effectiveness of programs under the Act with programs under part C of Title IV of the Social Security Act;

(8) Effectiveness of programs in meeting the employment needs of disadvantaged, unemployed and underemployed persons; and

(9) Extent to which artificial barriers restricting employment and advancement opportunities in agencies receiving funds under the Act have been removed.

(d) The Secretary shall compile, on a State, regional, and national basis, information obtained from periodic reports or special reports, surveys, or samples required from prime sponsors, including information on:

(1) Participant characteristics, including age, sex, race, health, level of education, and previous employment experience.

(2) Duration of participants in training and employment situations and information on the individual's activities for at least a year following the termination of participation in the programs and comparable information on other employees or trainees or participating employers; and

(3) Total dollar cost per trainee, including breakdown between salary and allowances, training and supportive services and administrative costs (Sec. 313(b)).

(e) Evaluations carried out in accordance with paragraphs (c) and (d) of this section may be conducted directly by the Department or by contract, grant or other arrangement, as the Secretary deems necessary or appropriate (Sec. 311(c)).

§ 97.183 Limitation.

Neither a prime sponsor nor the Secretary shall, in arranging for the assessment of any program under this subpart, utilize for such assessment any nongovernmental individual, institution, or organization associated with that program as a consultant, technical advisor or in any similar capacity (Sec. 704(c)).

§ 97.184 Consultation with the Secretary of Health, Education, and Welfare.

The Secretary shall consult with the Secretary of Health, Education, and Welfare with respect to arrangements for services of a health, education, or welfare character for programs under this subpart. This consultation shall focus on the relationship of services under this subpart with those being delivered under laws for which the Secretary of Health, Education, and Welfare is responsible.

HEARINGS

§ 97.190 Purpose and policy.

(a) Sections 97.190-97.198 set forth the adjudication procedures under this subpart, including procedures for hearings under this subpart and procedures for the receipt, investigation, hearing, and determination of questions of noncompliance with the requirements of the Act, the regulations under this subpart, and their grant agreements.

(b) It is the policy of the Secretary to receive information concerning alleged violations of Section 302 of the Act and of the regulations under this subpart from any person, prime sponsor, or any unit of Federal, State or local government. Assistance in the filing of a formal allegation may be secured from the appropriate regional or from the national Solicitor's Office of the Department by anyone who desires and needs such assistance.

(c) A participant in a program under this subpart must exhaust the administrative remedies established by the prime sponsor for resolving matters in dispute prior to filing a complaint under these §§ 97.190-97.198. The filing of a complaint under §§ 97.190-97.198 shall not, however, stay a decision rendered by a prime sponsor. A participant may file a complaint under these §§ 97.190-97.198, within thirty days after any final decision by a prime sponsor.

§ 97.191 Review of plans and applications; violations.

(a) The Secretary shall not finally disapprove any Comprehensive Manpower Plan or application for financial assistance submitted under Section 302 of the Act, or any modification thereof, without first affording the prime sponsor applicant reasonable notice and opportunity for a hearing.

(b) When information available to the Division of Indian and Native American Programs indicates that a prime sponsor may be:

(1) Maintaining a pattern or practice of discrimination in violation of Section 703(1) or Section 712(a) of the Act, or otherwise failing to serve equitably the economically disadvantaged, unemployed, or underemployed persons in the area it serves;

(2) Incurring unreasonable administrative costs in the conduct of program activities;

(3) Failing to give due consideration to continued funding of programs of demonstrated effectiveness including those previously conducted under the statutes repealed by Section 714 of the Act; or

(4) Otherwise materially failing to carry out the purposes and provisions of the Act or regulations issued pursuant to the Act; it shall notify the prime sponsor of its proposed action and provide the prime sponsor a reasonable time within which to respond. If the matter cannot be informally resolved, a hearing shall be held pursuant to § 97.196(a).

§ 97.192 Complaints; filing of formal allegations; dismissal.

(a) A prime sponsor applicant, which wishes to object to a determination of its lack of qualification or to its failure to be designated as a potential grantee, may file a Petition for Reconsideration with the Division of Indian and Native American Programs within 14 days of the notification of its lack of qualification or of its failure to be designated as a potential grantee.

(1) A Petition for Reconsideration shall be in writing, shall be signed by a responsible official of the prime sponsor applicant, and shall enumerate the factors which the applicant asserts should be reviewed in reconsidering its letter of intent-qualifications statement.

(2) Upon receipt of the Petition for Reconsideration, the Division of Indian and Native American Programs shall, within 30 days, make one of the following determinations:

(i) That, based on the available information from the original letter of intent-qualifications statement and the Petition for Reconsideration, the organization is qualified to submit a grant application or that the Department should continue the grant process with the applicant;

(ii) That the original determination was correct;

(iii) That the applicant is qualified, but the Division of Indian and Native American Programs has already designated another qualified applicant to operate a program for the area; or

(iv) That an informal conference between representatives of the prime sponsor applicant and the Division of Indian and Native American Programs will be held at a stated time and place on the matters complained of in the Petition for Reconsideration.

(3) If an informal conference is held, the complainant will have the opportunity to present any pertinent information which may further substantiate its assertions. The Division of Indian and Native American Programs shall, within 14 days after the informal conference, notify the prime sponsor applicant of its final decision. Petition for Reconsideration of prime sponsor designation shall not be subject to further administrative review.

(b) All complaints other than those made pursuant to paragraph (a) of this section shall be filed as a formal allegation with the Division of Indian and Native American Programs. A formal allegation so filed may be withdrawn only with the consent of the Division of Indian and Native American Programs.

(c) A formal allegation pending more than 6 months after filing because the complainant has failed to cooperate during investigation of the matter may be dismissed by the Secretary upon notice to the complainant at the complainant's last known address. Every formal allegation shall be in writing and signed by the complainant and shall be sworn to before a Notary Public or another person duly authorized to administer oaths. A formal allegation need not follow any particular format but should be neat, legible and suitable for flat filing.

§ 97.193 [Reserved]

§ 97.194 Contents of formal allegations; amendment.

(a) The formal allegation shall contain the following:

(1) The full name and address of the complainant;

(2) The full name and address of the party against whom the formal allegation is made;

(3) A clear and concise statement of the facts constituting the alleged unlawful practice, including pertinent dates;

(4) If known, the provisions of the Act, regulations, or grant provisions believed to have been violated;

(5) A statement disclosing whether proceedings involving the acts complained of have been commenced before a State, local or tribal authority, and if so, the date of such commencement and the name of the authority; and

(6) If the complainant is a program participant, a statement that the administrative procedures established by the prime sponsor have been followed to completion by the complainant, or that the prime sponsor has no applicable procedures.

(b) Notwithstanding the provisions of paragraph (a) of this section, a formal allegation will be considered to have been filed when the Division of Indian and Native American Programs receives from the complainant a written statement sufficiently precise to both identify those against whom the allegations are made and to fairly afford the other party enough information to begin to prepare a defense. A formal allegation may be thereafter amended to cure technical defects or emissions, including a failure to swear to the allegation, or to clarify or amplify the allegations. Such amendments shall relate back to the original filing date. An amendment alleging additional acts not directly related to or growing out of the subject matter of the original formal allegation will be permitted only if, at the date of the amendment, the allegation could not have been timely filed as a separate formal allegation, and if the rights of any respondent will not be prejudiced.

§ 97.195 Investigations.

(a) The Division of Indian and Native American Programs will make a prompt investigation of each formal allegation filed. The investigation may include, if appropriate, a review of the pertinent practices and policies of a prime sponsor, the circumstances surrounding the allegation, and other relevant factors.

(1) If the investigation indicates wrongdoing, the Division of Indian and Native American Programs will so inform the respondent and the complainant and, if possible, attempt to resolve the matter by informal means. If informal resolution does not occur within a reasonable period of time, a hearing shall be held pursuant to § 97.196(b).

(2) If an investigation does not warrant action pursuant to paragraph (a)(1) of this section, the Division of Indian and Native American Programs will so inform the parties in writing, unless § 97.196(a) or (c) applies.

(b) No prime sponsor, participant, or other person shall intimidate, threaten, coerce, or discriminate against any individual because the individual has made a complaint, formal allegation, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subpart. The identity of every complainant shall be kept confidential except to the extent necessary to carry out any investigation, hearing, or judicial proceeding arising under or from this subpart.

§ 97.196 Opportunity for hearings; when required.

An opportunity for a public hearing shall be extended if:

(a) The Division of Indian and Native American Programs receives a formal allegation from an affective Indian tribe, band, group or Alaskan native village or community or from another person that a prime sponsor has changed its Comprehensive Manpower Plan so that it no longer complies with Section 302 of the Act, or that, in the administration of the Comprehensive Manpower Plan, there has been a failure to comply substantially with any provision of the Comprehensive Manpower Plan or with the requirements of Section 703 or 704 of the Act, and the matter has not been resolved informally within a reasonable period of time; or

(b) After an investigation pursuant to § 97.195 reveals substantial evidence of facts to support a conclusion of probable cause that a violation of the Act, regulations, or grant provisions has occurred or is occurring, and the matter has not been resolved by informal means; or

(c) The Division of Indian and Native American Programs determines that fairness and the effective operation of programs under this subpart would be furthered by an opportunity for a public hearing.

§ 97.197 Hearings.

(a) *Hearings.* Whenever a hearing is to be held under this subpart, the Division of Indian and Native American Programs shall give reasonable notice by registered or certified mail, return receipt requested, to the affected parties. The notice shall list the allegation to be heard, the proposed remedial actions which may be taken, and the matters of fact or law asserted on the basis for the action. The notice shall also advise the parties that the matter in question has been referred by the Division of Indian and Native American Programs to an Administrative Law Judge of the Department for hearing. The Administrative Law Judge shall notify the parties of the time and place of hearing, that the time and place shall be subject to change for cause, that the parties may agree to waive the hearing and to have the case decided on the record, and that the failure without good cause of a party to appear at the hearing shall be deemed as that party's consent to the making of a decision without that party's input at the hearing.

(b) *Time and place of hearings.* Hearings shall be held in Washington, D.C. At the request of a party, and upon a determination by the Administrative Law Judge that good cause exists, the Administrative Law Judge may select for the hearing a city in which the Department has a regional office.

(c) *Right to counsel.* All parties shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted as described in Sections 5-8 of the Administrative Procedure Act.

(2) Technical rules of evidence shall not apply to the hearing, but rules or principles designed to assure production of the most credible evidence available, and to subject testimony to test by cross-examination, shall be applied by the Administrative Law Judge conducting the hearing. The Administrative Law Judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(3) The provisions of the Federal Rules of Civil Procedure governing discovery shall be applicable with respect to any hearing conducted under this subpart.

(4) When a public officer is a party in a hearing in his official capacity and, during its pendency, he dies, resigns, or otherwise ceases to hold office, the proceeding does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantive rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the continuity of the hearing process.

(e) *Consolidated hearings.* In cases in which the same or related facts are asserted, the Administrative Law Judge may consolidate the hearings.

§ 97.198 Initial certification, decisions and notices.

(a) The Administrative Law Judge shall make an initial decision, and may certify the entire record including his findings of fact, conclusions of laws, and initial decision to the Secretary for a final decision. A copy of the initial decision and any certification to the Secretary shall be mailed to the parties. Whenever an initial decision has been made, whether or not there has been a certification to the Secretary, a party may, within 30 days of the mailing of the notice of the initial decision, file with the Secretary exceptions to the initial decision, with reasons therefor and with a sworn certification that the exceptions filed have been served on the other party. The Secretary may, after an initial decision has been certified to him by an Administrative Law Judge, serve on the parties a notice that he will review the decision. Thereupon, the Secretary will conduct such a review and will issue a final decision. Upon the filing of exceptions, the Secretary may review the initial decision and issue his own final decision. Decisions of the Secretary shall be in writing, shall give the reasons for the decision, and shall be mailed promptly to the parties. In the absence of either exceptions by a party or certification to the Secretary by the Administrative Law Judge, and in the case of a decision by the Secretary not to review an initial decision, the initial decision of the Administrative Law Judge shall constitute the final decision of the Secretary, and the parties will be so notified in writing.

(b) Whenever the Secretary reviews an initial decision of an Administrative Law Judge pursuant to paragraph (a) of this section, the parties shall be given reasonable opportunity to file with him briefs or other written statements of their contentions.

(c) A final decision of the Secretary may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved and may contain such terms, conditions, and other determinations as are consistent with and will effectuate the purposes of the Act and the regulations under this subpart, including determinations designed to assure that no Federal financial assistance will thereafter be extended under such a program unless and until the noncompliance is corrected and the Secretary is satisfied that full compliance with the Act and the regulations under this subpart has been achieved.

Subpart C—Migrant and Seasonally Employed Farmworkers Programs

Authority: Comprehensive Employment and Training Act of 1973, as amended (Pub. L. 93-203, 87 Stat. 839; Pub. L. 93-567, 88 Stat. 1845), secs. 702(a) and 303, unless otherwise noted.

Source: 42 FR 1658, Jan. 7, 1977, unless otherwise noted.

General

§ 97.201 Scope and purpose of Title III, Section 303 Programs.

(a) It is the purpose of Title III section 303, of the Act to provide manpower and other services for those individuals who suffer chronic seasonal unemployment and underemployment in the agriculture industry, which has been substantially affected by recent advances in technology and mechanization. These individuals constitute a substantial portion of the nation's rural manpower problem and substantially affect the entire national economy.

(b) Because of the special nature of the problem faced by migrant and seasonal farmworkers, the programs developed and implemented under this section of the Act shall be administered by the Employment and Training Administration at the national level. Such programs will be flexible in design and shall have these primary objectives:

(1) *Alternatives to agricultural labor.* Provision of services to migrant and other seasonally employed farmworkers and their families who wish to seek alternative job opportunities to seasonal farmwork which will equip them to compete in other labor markets and to secure stable year-round employment providing an income above the poverty level.

(2) *Improved agricultural life style.* Provision of services necessary to improve the well-being of migrants and other seasonally employed farmworkers and their families who remain in the agricultural labor market and/or to up-grade their skills to enable them to take advantage of job opportunities created by changing agricultural technology.

§ 97.202 Scope and purpose of this subpart.

(a) The regulations promulgated to carry out the Act are set forth in 29 CFR Parts 94-99 as published in the Federal Register on June 25, 1976 (40 FR 26334). As each substantive title of the Act provides for the establishment of a specific type of program, the regulations promulgated in Parts 94 through 99 provide a separate part for each basic type of activity, and two parts deal with general matters relating to the Act. This subpart deals with all matters pertaining to the implementation and operation of Migrant and Seasonal Farmworker Programs pursuant to section 303 of the Act. It is designed to contain in itself all the regulatory material under the Act necessary for the operation of section 303 programs except where specific reference is made to other parts of this title. When the provisions of this subpart conflict with the provisions of other regulations under the Act, the provisions of this subpart shall prevail.

(b) Statutory authority for the regulations contained in this Subpart C may be found in sections 303 and 702(a) of the Act, as amended as well as in other substantive provisions of the Act.

(c) The regulations in this part govern programs funded under the Comprehensive Employment and Training Act of 1973 prior to amendment and reauthorization in 1978 (Pub. L. 95-524, 92 Stat. 1909), and are thus in many particulars superseded by regulations implementing the reauthorized Comprehensive Employment and Training Act, Pub. Law 95-524, 92 Stat. 1909, which are being codified at 20 CFR Parts 675 *et seq.* Any questions regarding the applicability of any particular regulation in Title 29 should be addressed to the Regional Administrator for the Employment and Training Administration.

[42 FR 1658, Jan. 7, 1977, as amended at 44 FR 37911, June 29, 1979]

§ 97.203 Definitions.

A listing of definitions of terms used in the regulations promulgated to implement the Act is set forth in § 94.4 of this subtitle. Those definitions applicable only to section 303 or having special significance to section 303 are the following:

"Allocation" shall mean the amount of funds calculated in accordance with section 97.204 of this subpart to be used as planning estimates for section 303 programs in each State and distributed in accordance with the requirements of this subpart.

"Appropriate amount" for the purposes of committing Title I and/or II funds for farmworkers shall mean an amount proportional to the significance of the farmworkers in the prime sponsor's population; for example, the amount whose ratio to the total Title I funds available to the prime sponsor is equivalent to the ratio of the number of farm workers to the total number of low-income workers in the prime sponsor's jurisdiction.

"Eligible Applicant," for purposes of receiving funds allocable pursuant to § 97.204(c) of this title, shall mean:

(a) A recognized prime sponsor under CETA Title I having within its jurisdiction a significant segment of migrant and other seasonally employed farmworkers for whom it has committed funds provided under Title I and/or II of the Act in an appropriate amount; or a public agency designated by such prime sponsor to receive section 303 funds;

(b) A private nonprofit organization authorized by its charter or articles of incorporation to provide manpower or such other services as may be funded under this subpart.

"Emergency assistance" shall mean temporary services on an emergency basis which are not immediately available from non-section 303 sources.

"Establishment" shall mean an economic unit, generally at a single physical location, where business is conducted (For example: Farm, orchard, ranch). For the purposes of the "seasonal farmworker" definition, farm labor contractors and crew leaders are not considered establishments; it is the organizations to which they supply the workers that are the establishments.

"Family" shall mean one person, or more than one person living in a single household who are related to each other by blood, marriage, or adoption. A stepchild or foster child who receives at least 50 percent of his/her support from the stepparent or foster parents shall be counted as a member of the stepparent's or foster parents' family. A member of a household:

(1) Who is 18 or older, and

(2) Who receives less than 50 percent (50%) of his/her maintenance from the family, shall not be considered to be a member of the family. Such an individual shall be considered as a family residing alone or in group quarters.

"Farmwork" shall mean work performed for wages in agricultural production or agricultural services (as defined in the most recent edition of the Standard Industrial Classification (SIC) Code definitions included in industries 01, 02 (excluding 027), and 07 excluding 074, 075, and 078).

"Farmworker organization" shall mean a private nonprofit organization directed principally by farmworkers.

"Funding request" shall mean a formal proposal submitted by an applicant which detail the type and extent of services to be provided to farmworkers and their dependents for consideration by the Secretary for funding under section 303.

"Health care" shall include but is not limited to preventive and clinical medical treatment for farmworkers and their dependents.

"Manpower services" shall mean such services as (a) orientation; (b) counseling; (c) job development; (d) referral; (e) job placement; (f) followup.

"Migrant farmworker" shall mean a seasonal farmworker who performs or has performed during the preceding twelve months agricultural labor which requires travel such that the worker is unable to return to his/her domicile (accepted place of residence) within the same day.

"Nutritional assistance" shall mean services including but not limited to assisting farmworkers and their dependents to obtain food stamps and vouchers, access to other food programs, fair hearings and limited direct cash purchases of food.

"Participant" shall mean an individual who qualifies and receives services except for an individual who receives only outreach and intake (including assessment) services. An individual applicant becomes a participant when:

(1) The individual is declared eligible upon intake; and

(2) The individual receives employment, training or services funded under the Act following intake, except for an individual who receives only outreach and intake (including assessment) services.

"Planning estimates" shall mean the preliminary allocations announced for the purpose of providing target funding levels for each State.

"Relocation assistance" shall mean the activities necessary to arrange for a family to move to a new abode for the purpose of receiving services and/or training which will lead to alternative job opportunities to seasonal farmwork. Activities may include but are not limited to: Necessary manpower services; the costs of the actual transfer of goods and property including mileage for the families' travel; emergency assistance; rent subsidies; and other supportive services.

"Residential support" shall mean the provision of temporary housing for families receiving training, supportive services, or post-placement services. The grantee may offer such housing in several ways including but not limited to directly operating a residential facility with all necessary services or through the grantee's subsidizing all or part of the rental and utility costs for an enrolled family.

"Seasonal farmworker" shall mean a person who during the preceding twelve months worked at least 25 days in farm work and worked less than 150 consecutive days at any one establishment. "Seasonal farmworker" includes both migratory and nonmigratory farmworkers, but does not include supervisors or nonmigratory individuals who are full-time students or farmworkers who are not "seasonal" as defined in the preceding sentence.

"Section 303" shall mean the Migrant and Seasonal Farmworker Programs, section 303, Title III of the Comprehensive Employment and Training Act of 1973 (Pub. L. 93-203, 87 Stat. 839).

"State" includes the Commonwealth of Puerto Rico.

"Supplemental funds" shall mean any funds allocated in excess of that amount announced as a "planning estimate."

"Supportive Services" shall mean such services as health and medical service, child care, transportation, emergency assistance, relocation assistance, residential support, nutritional services, and legal services, designed to improve the well being of those remaining as seasonal farmworkers as well as such services described in § 94.4(ddd) of the subtitle.

"Target area" shall mean a geographic area to be served by a section 303 grant. Such an area may be a county, multi-county area, a state, or a multi-state area.

"Target population" shall mean farmworkers and their dependents who meet § 97.232.

§ 97.204 Allocation of funds.

(a) *Available funds.* For the purpose of implementing this subpart and pursuant to section 303 of the Act, the Secretary shall reserve, from funds available for Title III programs, funds to serve migrants and other seasonally employed agricultural workers in an amount equal to not less than 5 percent of the amount allocated pursuant to section 103(a)(1) of the Act.

(b) *National Account.* (1) No more than twenty percent (20%) of the statutory reserve for section 303 activities will be set aside for the National Account, to be used at the discretion of the Secretary for experimental programs; clearing house activity; labor market information; interstate programs; special needs, including but not limited to projects such as permanent housing; programs to meet the needs of emergency situations and changing agricultural technology; and other programs.

(2) Funds from the National Account may be obligated by the Secretary by means of either contracts or grants to private nonprofit agencies or contracts to private profit making organizations. National Account funds obligated to states and local units of government shall be awarded through grants.

(3) The Secretary shall fund programs from the National Account according to procedures deemed advisable by the Secretary, but all National Account programs shall include performance standards specifically designed for those programs.

(4) The provisions of this Subpart C apply in their entirety to programs funded from the National Account, with the exception of §§ 97.205, (Eligibility for Allocable Funds), 97.211 (Allocations), 97.213-97.215 (Selection of Potential Grantees) and paragraph (b) of § 97.237 (Performance Standards).

(c) *State allocations* (*allocable funds*). (1) No less than eighty percent (80%) of the funds reserved for section 303 activities shall be allocated for farmworker programs in individual states in an equitable manner using the best data available as determined by the Secretary.

(2) *Hold harmless clause.* No state shall be allocated an amount which is less than 90 percent of the amount of allocable section 303 funds announced as the State planning estimate. The base amount on which the 90 percent is calculated shall not include any supplemental funds which may have been allocated in the prior fiscal year. If during any fiscal year the appropriation for section 303 is less than that appropriated in the previous fiscal year, the Secretary reserves the right to suspend the provisions of paragraphs (c)(1) and (2) of this section.

(3) *Allocation Exceptions.* (i) The Secretary reserves the right not to allocate any funds for use in a State whose allocation is less than $50,000. The Secretary will announce which state(s) will not be allocated funds on or about July 1 of each fiscal year. If the State allocation would be an amount less than $50,000, the Secretary may allocate $50,000 for programs in that State.

(ii) Currently funded programs which are unsuccessful applicants for grant funds shall be given notice that funding will terminate upon expiration of the current grant and at least ninety-days lead time to phase out their operations, but such notice will not bind the Secretary to obligate additional funds. The notification of non-selection shall be the notice of termination and the requirements of § 97.267 are to be followed.

(4) *Funding cycle.* All projects funded through State allocations shall be funded beginning January 1 of each year in accordance with the following funding cycle:

(i) On or about July 1: Announcement of State planning estimates and the invitation to submit Funding Requests for State(s) or area(s) open for competition as provided in § 97.219.

(ii) August 1: Deadline for submission of Preapplication Forms for Federal Assistance forms (3 p.m., e.d.t.).

(iii) September 1: Deadline for submission of Funding Requests (3 p.m., e.d.t.).

(iv) On or about November 1: Notification of selection as potential grantees.

(v) January 1: Commencement of grant awards.

If the Secretary deems it advisable to alter the funding cycle provided herein a revised funding cycle shall be published in the FEDERAL REGISTER on or about July 1 of any fiscal year.

§ 97.205 Eligibility for allocable funds.

The following organizations and units of government shall be eligible to receive allocable funds available under section 303:

(a) A recognized prime sponsor under CETA Title I having within its jurisdiction a significant segment of migrant and other seasonally employed farmworkers for whom it has committed funds provided under Title I and/or II of the Act in an appropriate amount; or a public agency within such a prime sponsor's geographic boundaries designated by that eligible prime sponsor to receive section 303 funds in its place.

(1) An applicant eligible under paragraph (a) of this section which wishes to apply for consideration for grant funds to operate programs in an area outside the area in which it is eligible to operate under CETA Title I may do so only with the concurrence of the Title I prime sponsor for that area so affected. Such concurrence may be accomplished by means of an agreement that provides for a subgrant from the applicant prime sponsor to the affected Title I prime sponsor or by letter from the affected prime sponsor authorizing the applicant prime sponsor to operate programs in the affected area.

(b) A private nonprofit organization authorized by its charter or articles of incorporation to provide manpower or such other services as are permitted by this subpart.

(c) An organization which wishes to be considered for grant funds to operate programs in more than the State shall submit separate Funding Requests for each state for which it wishes to be considered for funding. An applicant eligible under paragraph (a) of this section which wishes to operate programs in an area outside of its State may do only with the concurrence of the Title I prime sponsor for that area.

GRANT PLANNING AND APPLICATION PROCEDURES

§ 97.210 Grant planning and application procedures in general.

Section 97.210-97.220 provide procedures for obtaining and modifying a grant to operate programs under section 303 of the Act. Specifically, these sections describe the procedures in the grant award process from the announcement of invitation to submit Funding Requests, through the grant application process, to review by the Department and approval of the grant.

§ 97.211 Announcement of State planning estimates and invitation to submit funding requests.

(a) *Announcements*—(1) *State planning estimates.* On or about July 1 of each fiscal year the Secretary shall announce State planning estimates of resources available to implement section 303 programs.

(2) *States or areas open for competition under section 303.* On or about July 1 of each fiscal year the Secretary shall announce a list of States and/or areas open for competition under section 303 as provided in § 97.219.

(3) *Invitation to submit funding requests.* On or about July 1 of each fiscal year, the Secretary shall invite applicants as defined in § 97.203 interested in receiving funding under section 303 to submit a Funding Request. The invitation will cover only those areas designated by the Secretary as open for competition.

(4) These announcement shall be made in the FEDERAL REGISTER and through the appropriate Regional Administrator for Employment and Training.

(b) *Intention to apply.* (1) Any eligible applicant intending to apply for funds from a State allocation must submit a Preapplication for Federal Assistance form to the Secretary by August 1, of each fiscal year.

(c) *Opportunity for review and comment:* (1) On or about August 20 of each fiscal year, the Secretary shall publish in the FEDERAL REGISTER a list of all eligible applicants which have submitted preapplications for all or part of each State allocation:

(2) Eligible applicants wishing to review and comment on the Funding Request of any eligible applicant within their State as listed in the FEDERAL REGISTER pursuant to paragraph (c)(1) of this section must request a copy of the Funding Request from the eligible applicant so listed.

(3) Eligible applicants submitting a Funding Request to the Secretary to be considered for all or part of a State's allocable funds must send a copy of the Funding Request to all other eligible applicants within the State which have requested a copy of the Funding Request pursuant to paragraph (c)(2) of this section.

(4) These copies must be submitted to requesting organizations at the same time the Funding Request is submitted to the Secretary. Funding Requests sent by mail to requesting organizations pursuant to paragraph (c) (2) and (3) of this section shall be sent by registered or certified mail with return receipt requested or if a Funding Request is delivered by hand, the recipient eligible applicant shall provide a written receipt bearing the time and date of delivery.

(5) Comments of Funding Requests shall be submitted to the Secretary at the address provided in § 97.214, within 30 days of receipt of the Funding Request, but no later than October 8, of each fiscal year. A copy of all comments must also be sent to the concerned eligible applicant by registered mail at the same time.

§ 97.212 Preapplication for Federal assistance.

(a) An applicant eligible to receive allocable funds available under section 303 shall submit a preapplication to the Secretary. The preapplication shall consist of Standard Form 424 as prescribed by Federal Management Circular (FMC) 74-7, with an attachment identifying the target area by State and Counties.

(b) Preapplication for Federal Assistance form, Part I, shall be submitted to the offices identified in § 97.214 (a) and (b). If an organization does not submit a Preapplication for Federal Assistance form by August 1, its Funding Request shall not be considered.

§ 97.213 Content and description of funding request.

(a) *General.* (1) This section describes the Funding Request forms which applicants shall use to apply for funds under section 303.

(2) Forms and instructions are contained in the Forms Preparation Handbook and its section 303 supplement and are available from the Secretary upon request.

(3) The Funding Request consists of four parts: The application for Federal Assistance; the Eligibility documentation; the Comprehensive Plan for Farmworkers; and the Assurances and Certifications form.

(b) *Funding Request forms*—(1) *Application for Federal Assistance.* This identifies the applicant and the amount of funds requested. It provides information concerning the area to be served and the number of farmworkers expected to benefit from the program. The form provided in Federal Management Circular 74-7, Part I, grant application for nonconstruction programs, shall be used with such other forms, as may be required.

(2) *Eligibility documentation.* The following documents shall be submitted by an applicant to meet the eligibility requirements for section 303.

(i) A statement indicating the legally constituted authority under which the organization functions;

(ii) An employer identification number from the Internal Revenue Service; and, for private nonprofit applicants, proof of their tax-exempt status;

(iii) A certification by the chief fiscal officer of a public organization or by a CPA for private nonprofit organizations attesting to the adequacy of the applicant's accounting system, if applicable (refer to § 97.251 to determine applicability);

(iv) A copy of the Comprehensive Manpower Plan component which describes CETA Titles I and/or II services to be made available to farmworkers for the fiscal year for which funds are requested (for CETA prime sponsor applicants only) pursuant to § 97.205(a).

(v) Documentation of concurrences from affected prime sponsor(s), as described in § 97.205(a) (for CETA prime sponsor applicants only).

(3) *Comprehensive Plan for Farmworkers.* The Comprehensive Plan for Farmworkers is a detailed explanation of how the applicant proposes to use section 303 funds for farmworkers within its target area. Upon incorporation into the grant agreement, the amended Comprehensive Plan for Farmworkers will become the basis for programmatic and fiscal accountability of the section 303 grant. The Comprehensive Plan for Farmworkers consists of the Narrative Description of the Program, the Program Planning Summary, and Budget Information Summary described below:

(i) *Narrative description of program.* The Narrative Description of the Program analyzes the manpower and social problems of the target population within the target area to set priorities and goals, describes proposed program activities and delivery systems to meet those goals, proposes performance standards for all program activities, and projects the results which may be expected from the program. The Narrative Description of the Program requires a detailed justification and description of each program activity, including the following specific items (the Forms Preparation Handbook is a guide for completing these items):

(A) Objectives and needs for assistance:

(*1*) Policy statement on purpose of program;

(*2*) Description of economic conditions;

(*3*) Analysis of labor market and social service situation;

(*4*) Statement of number of farmworkers and dependents to be served; and

(*5*) Goals and priorities.

(B) Program design and results expected:

(*1*) Statement of strategy for accomplishing goals;

(*2*) Detailed description of each program activity and service, including costs, manner of delivery, specific objectives, and performance standards; and

(*3*) Enumeration of objectives and performance standards related to goals identified in Part A of the Narrative Description of Program.

(C) Approach:

(*1*) Description of the planning system, participation of and role of the governing board or advisory councils in planning and implementation;

(*2*) A copy of the by-laws or other official documents showing the structure of pertinent Boards, Area Councils, or Advisory bodies;

(*3*) Description of the delivery system;

(*4*) Description of recruitment and eligibility verification methods;

(*5*) Description of the applicant's administrative system;

(*6*) Résumés of key management staff;

(*7*) Justification of section 303 funded administrative costs as defined in § 97.255, in excess of 20 percent;

(*8*) Documentation of past experience including, but not limited to, the following:

(i) Reports both programmatic and financial, submitted to agencies to which the applicant is accountable for program performance;

(ii) Names and telephone numbers of responsible officials who can substantiate any narrative assertions of past experiences;

(iii) Evaluations, assessments, reports, letters, etc., compiled by organizations other than the applicant;

(iv) A statement for all documentation giving the relationship between the applicant and other organization(s) involved; and

(*9*) A description of linkages with other manpower programs, other social service programs, and farmworker organizations, including letters of commitment for all services to be provided section 303 participants at no cost to section 303;

(*10*) Description of monitoring and self-evaluation system.

(D) Geographic location served. Description of the geographic locations within the target area in which the applicant has operated and in which the proposed program will operate, and in which it will recruit and refer participants.

(E) Detailed Budget. For each program activity, section 303 grantees will be required to submit an itemized budget of allowable costs, as defined in §§ 97.255 and 97.260. The CETA and the non-CETA share of the total costs shall be noted for each program activity. For all section 303 funds requested, personnel and nonpersonnel costs shall be itemized for each program activity proposed and for the cost category of administration. This itemization shall include individual operational staff salaries, staff fringe benefits, staff travel, equipment purchases, etc.

(ii) *Program planning summary.* The Program Planning Summary requires an applicant to provide a quantitative statement to provide a quantitative statement of enrollment levels, the number of participants to be served by each program activity (classroom training, on-the-job training, work experience, services to participants, and other activities), and outcomes for program participants. It also requires identification of the number of individuals to be served within the target population.

(iii) *Budget information summary.* The Budget Information Summary requires an applicant of planned expenditures and obligations. It requires an applicant to indicate yearly planned expenditures by cost category (administration, allowances, wages, fringe benefits, training, and services); the applicant is to reflect planned quarterly obligations and expenditures by program activity.

(4) *Assurances and certifications.* The Assurances and Certifications form is a signature sheet on which the applicant assures and certifies that it will comply with the Act, the regulations of the Department, other applicable laws, and applicable Federal Management Circulars from the General Services Administration (GSA). Signatures of the Assurances and Certifications form by private nonprofit section 303 Eligible Applicants and Grantees shall mean that section 303 funds shall be expelled in compliance with Federal Management Circulars 74-4 and 74-7: provided that if a Federal Management Circular applicable to the administration of grants to nonprofit organizations becomes effective before the grant period, such Circular shall supersede any provisions of FMC 74-4 and 74-7 (made applicable to private non-profit organizations by this subpart) which conflict with the provisions of such Circular. The Assurances and Certifications form is contained in the Forms Preparation Handbook. The following is a summary of the items which are described in detail on that form:

(i) Compliance with the Act and regulations issued under the Act;

(ii) Compliance with Federal Management Circulars 74-4 and 74-7 and OMB Circular A-95;

(iii) Legal authority to apply for a section 303 grant;

(iv) Nondiscrimination (section 703(i));

(v) Compliance with Title VI and VII of the Civil Rights Act of 1964;

(vi) Compliance with the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970;

(vii) Compliance with the Hatch Act and restrictions on political activities (as applicable);

(viii) Prohibition on use of position for private gain;

(ix) Access of Comptroller General and Secretary to records and documents pertaining to the Act;

(x) Nonsupport of religious facilities;

(xi) Maintenance of required health and safety standards;

(xii) Position of appropriate worker's compensation to participants;

(xiii) Use of funds under the Act to supplement rather than supplant funds otherwise available, prohibition on displacement of employed workers by participants employed under the Act, and prohibition on impairment of existing contracts for services;

(xiv) Prohibition of use of funds for lobbying activities in violation of 18 USCA 1913.

(xv) Compliance with Department of Treasury Regulations found at 31 CFR 205.

(xvi) Compliance with the provisions in the Clean Air Act and Federal Water Pollution Control Act.

§ 97.214 Submission of Funding Request.

(a) An eligible applicant shall submit three copies of the Funding Request to the address listed below:

U.S. Department of Labor
Employment and Training Administration
Patrick Henry Building—Room 7122
601 D Street NW.
Washington, D.C. 20213
ATTN: Chief, Division of Farmworker Programs

(b) Two copies of the Funding request shall also be submitted directly to the appropriate Regional Administrator for Employment and Training Administration at the same time the three copies are submitted to the above address and labeled: Funding Request for CETA 303 Farmworker Program.

(c)(1) Copies of the Funding Request shall also be submitted to the appropriate State and/or area clearinghouse(s), as well as to those eligible applicant(s) which request an opportunity for review and comment as provided in § 97.211(c) at the same time the Funding Request is submitted to the above address. Eligible applicants shall send a statement to the above address accompanying the Funding Request, indicating that the procedures in this paragraph have been followed.

(2) All comments from clearinghouses and other reviews shall be submitted to the above address by October 8. However, no notification of selection of potential grantee(s) for a State or area will be made until all clearinghouses and other reviews have had at least 30 days from receipt of the Funding Request from that State or area to submit comments.

(d) Funding Requests sent by mail to the address provided in paragraphs (a) and (c) of this section must be registered or certified with return receipt requested. In order to be considered to be submitted on time by the Employment and Training Administration, the following conditions must be met:

(1) The Funding Request must be registered or certified by the Postal Service on or before 3 p.m. Septmember 1. In the event that September 1 falls on a Sunday, on a holiday, or at any other time during which the Postal Service is not operational, it shall be the responsibility of the applicant to properly register and certify the Funding Request so that it will bear a post mark prior to 3:00 p.m. September 1. No deviation in this condition will be made by the Employment and Training Administration, and all Funding Requests received bearing postmarks after 3:00 p.m. September 1, shall be returned without consideration.

(e) Funding Requests delivered by hand must be taken to the address given in paragraph (a) of this section. All applicants who deliver a Funding Request will be given a receipt bearing a time and date of delivery. Funding Requests will be accepted daily between the hours of 8:15 a.m., and 4:45 p.m., Washington, D.C. time, except Saturdays, Sundays, and holidays. Funding Requests will not be received after 3 p.m., e.d.t., on September 1. In the event that September 1 falls on a Saturday, Sunday or, holiday, it shall be the responsibility of the applicant to deliver the Funding Request so that it will be received prior to 3 p.m., e.d.t., September 1. No deviation in this condition will be made by the Employment and Training Administration and no Funding Request delivered after 3 p.m., e.d.t., September 1 shall be accepted.

§ 97.215 Review of funding requests.

(a) *Standards for reviewing Funding Requests for allowable funds.* Funding Requests submitted by applicants shall be reviewed and evaluated by the Secretary to determine those judged to be most qualified to receive a grant under section 303 for program operations in a particular target area according to the procedures outlined in paragraph (a) of this section. In addition, when appropriate under section 306 of the Act. Funding Requests shall be reviewed by the Secretary of the Department of Health, Education, and Welfare (DHEW) or his/her designee in accordance with section 306 of the Act.

(1) *Determination of eligibility.* The Secretary shall review the documentation described in § 97.213(b)(2) to determine the eligibility of each applicant and shall: (i) Designate the orga-

nization as eligible under section 303; or (ii) determine that the organization is conditionally eligible pending submission of further documentation; or (iii) determine that the organization is ineligible under section 303. An organization determined to be ineligible shall not be reviewed further.

(2) *Review of Comprehensive Plan for Farmworkers.* The Comprehensive Plans for Farmworkers submitted by applicants shall be reviewed and evaluated by the Secretary to determine those applicants which will be designated potential grantees for a particular target area.

(i) Factors for evaluating Plans. Plans shall be evaluated by the Secretary based on the criteria listed in this paragraph.

(ii) Each of the following factors is assigned a numerical range which shall be used to rank Plans. A separate rating within the identified range for each factor shall be assigned to each Plan based on information provided in the Plan. The sum of the ratings shall constitute the overall rating of the Plan. The following factors shall be considered in assigning ratings:

(A) *Program development—Range* 0-10. The program development factor is a rating of the proposed program's potential impact on the full range of farmworker needs and its fulfillment of the intent of section 303. The rating will consider the following elements:

(*1*) *Training.* The proposed program provides alternatives for farmworkers to leave farmwork by offering training in a number of occupations providing a wage above the poverty level into which participant can be successfully placed within the existing economic and labor market conditions in the target area. The proposed program provides alternatives for farmworkers to secure full time agriculture work providing an income above the poverty level.

(*2*) *Services.* The proposed program provides supportive services which are necessary to assist farmworkers in leaving seasonal farmwork and/or provides services which will improve the living and working conditions of farmworkers remaining in agriculture.

(*3*) *Program impact.* The proposed program will directly impact on the problems and needs of farmworkers in the particular target area. The highest rating of 10 shall be awarded to an organization which has adequately analyzed the economic situation of the target area and identified the social and economic needs of the target population, and has developed a program based on this analysis and identification, which provides service including training and supportive services that can be successfully implemented within the existing target area economic and labor market situations to meet these needs.

(B) *Delivery system—Range* 0-10. The delivery system factor is a rating of the applicant's system for delivering the comprehensive program services and its potential ability to provide effective and timely services to farmworkers. This rating shall include the potential effectiveness of subgrantees and contractors in providing services specifically for farmworkers.

(*1*) The highest rating of 10 shall be awarded to an organization whose delivery system is efficiently integrated and whose subgrantees' and contractors' delivery systems are coordinated with the applicant's into a functioning unit.

(C) *Administrative capability—Range* 0-10. The administrative capability factor is a rating of the applicant's management experience and efficiency. The rating shall include consideration of the managerial expertise of the organization's present and proposed staff in managerial and decision-making positions. This factor shall also consider administrative efficiency based on comparative administrative cost. The highest rating of 10 shall be awarded to organizations which can demonstrate the capability to administer efficiently a multi-activity delivery system with comparatively low administrative costs.

(D) *Responsiveness to farmworkers—Range* 0-10. The responsiveness to farmworkers factor is a rating of the organization's active and visible involvement of farmworkers in its planning and the proposed involvement of farmworkers in implementation of its proposed program of services. The rating will also consider the sensitivity of the organization's present and proposed staff in program positions. The rating will consider the following elements:

(*1*) *Involvement of farmworker Boards Advisory Councils.* This factor is a rating of the involvement of farmworkers on applicant's governing boards and advisory councils in the planning, implementation and operation of the proposed program. This involvement shall be manifested by the responsibilities incorporated in the board's or advisory council's by-laws and the farmworker representation on these bodies. The highest rating of seven shall be awarded to organizations whose boards or advisory councils have responsibility for reviewing and making recommendations on section 303 plans, monitoring section 303 program operations, recommending corrective action, and having established mechanisms for effecting necessary corrective actions, and whose membership includes farmworkers.

(*2*) *Staff sensitivity.* The sensitivity factor is a rating of the ability of the organization's staff to relate to farmworkers and be responsive to their needs. The highest rating of 3 shall be awarded to those organizations whose staffing includes ex-farmworkers and reflects the ethnic, racial, and sexual composition of the target population.

(E) *Linkages and coordination—Range* 0-10. The linkages and coordination factor is a rating of an organization's demonstrated and documented programmatic ties with appropriate State and local agencies, private nonprofit organizations, and other groups providing resources and services to farmworkers. The highest rating of 10 shall be awarded to applicants which would operate programs incorporating services at less than, or no cost to section 303 from other agencies for the purpose of providing manpower and other services to participants and whose Funding Request includes letters of commitment for these services.

(F) *Review of experience—Range* 0-50. The organization's past experience in providing a comprehensive program of manpower and other services shall be reviewed and evaluated by the Secretary to determine those judged to be most qualified to receive a grant under section 303 for program operations in a particular target area. A numerical range of 0-50 shall be used to rank the experience of applicants.

(*1*) *Existing section 303 grantees.* For existing section 303 grantees competing as eligible applicants, the review of experience will be based on the record of performance in delivering section 303 services. The Secretary shall review and evaluate the grantee's performance through review of reports, monitoring and/or auditing of the program. The highest rating of 50 may be awarded to a grantee which has provided an effective program of services for farmworkers; the factors in this ratio shall include but not be limited to (A) meeting or exceeding all of the individual grant performance standards in its Comprehensive Plan for Farmworkers; (B) meeting planned performance levels on its Program Planning Summary, and Budget Information Summary for the prior fiscal year (or on its Project Operating Plan); and (C) having met the requirements for program operations and grant administration of this Subpart C.

(*2*) *Other eligible applicants.* For applicants who are not section 303 grantees, the review of experience will be based on information submitted in the Funding Request. In order to receive a rating for experience, an applicant must have adequately identified the funding source(s) to which it was accountable. The assertions of success should be adequately substantiated and documented in the Funding Request, including official evaluations, if available. The Secretary reserves the right to verify the information submitted in the Funding Request and to obtain additional information if the information submitted is not adequate for the purpose of this review. The following factors shall be considered in assigning ratings:

(A) *Program experience, regardless of nature of clientele—Range* 0-40. (*1*) The organization has operated an effective comprehensive program of services, including but not limited to the program activities and supportive services described in paragraphs (c) through (g) of § 97.233.

(2) The organization has provided training and other manpower services effectively.

(3) The organization has met or exceeded the stated objectives for program performance of all program activities it has provided.

(4) The organization has effectively administered a multi-activity delivery system, if applicable.

(5) The administration and management of the program has conformed to acceptable management standards, including but not limited to those set forth in the Grant Administration sections of this Subpart C and Part 98 of this subtitle.

(B) *Farmworker experience—Range 0-10.* The organization or its subgrantee(s) has provided services specifically for farmworkers. A maximum rating of 10 shall be awarded for farmworker clientele. The highest rating of 50 shall be awarded to an organization which has operated a comprehensive multi-activity program of manpower and other services, whose assertions of effectiveness are supported by individuals from the funding source(s) and/or by an official evaluation, and has served farmworkers. The highest rating of 50 shall also be awarded to prime sponsors whose experience meets the standards presented above and whose subgrantees include farmworker organization(s).

(b) *Selection of potential grantees.* (1) As a result of the procedures set forth in paragraph (a) of this section, of consideration of the potential effectiveness and efficiency of the proposed programs, and of comments received pursuant to § 97.214(c), the Secretary shall designate potential grantees to receive a grant under section 303 for program operations in a designated target area. The consideration of the potential effectiveness and efficiency of the proposed programs includes but is not limited to the following: (i) cost effectiveness, and (ii) service delivery consideration.

(2) The Secretary may conditionally designate organizations as potential grantees pending resolution of their eligibility status, submission of additional documentation, or changes in the proposed program.

(3) The Secretary also reserves the right to defer designation of any organization which has submitted a Funding Request for a state or area or to invite the submission of new proposals. Such designations will be deferred pending (i) adequate time to consider performance of current CETA section 303 applicants, or (ii) timely and satisfactorily correction of deficiencies by applicants in their current CETA section 303 programs.

(4) The Secretary reserves the right to not select an applicant if there is adequate evidence of substantial mismanagement of government funds.

§ 97.216 Notification of selection.

(a) (1) Potential grantees selected as a result of the procedures set forth in § 97.215 shall be so notified by the Secretary. The notification shall invite each potential grantee to negotiate the final terms and conditions of the grant, shall establish and time and place of the negotiation, and shall indicate the State or area to be covered by the grant. Changes in the proposed program's target area and/or funding level are not appealable under the provision of §§ 97.290-97.292.

(2) Clearinghouses submitting comments on the application will be notified of the selection of the potential grantee within seven working days of selection. Where a clearinghouse has recommended against the selection of the potential grantee, the notification shall include an explanation as to the reasons why its substantive comments were not accepted.

(b) In the event that no Funding Requests are received for a specific State or area or that those received are deemed to be unacceptable, for where a grant agreement is not successfully negotiated, the Secretary reserves the right to invite one or more organizations to submit a proposal for that State or area. In the event of a second invitation, the review criteria for allocable funds need not apply, and funds may be awarded at the discretion of the Secretary.

(c) An applicant whose Funding Request is not selected by the Secretary to receive section 303 grant funds shall be notified in writing and shall be provided the names and addresses of potential grantees for its State.

(d) Applicants who submit Funding Requests which have been rejected may resubmit a new Funding Request the State(s) or area(s) in which they are interested in providing services is announced by the Secretary as open for recompetition.

(e) Any applicant whose Funding Request is considered and rejected by the Secretary for a section 303 grant may request an administrative review as provided in § 97.290 and § 97.292.

§ 97.217 Negotiation of final grant.

(a) Notice of selection as a potential grantee does not constitute approval of the totality of the Funding Request, the funding level sought, nor of the target area requested.

(b) Prior to the actual award of a grant, representatives of the potential grantee and of the Secretary shall enter into negotiations. The subjects of negotiations shall include but shall not be limited to: (1) Program components; (2) subgrantees; (3) funding levels; (4) program objectives; (5) performance levels and standards; and (6) administrative systems.

(c) The Secretary reserves the right to decline to fund any program component(s) or subgrantee(s) or contractor(s) listed in a potential grantee's Funding Request, to add subgrantees, and to modify the target area to be served.

(d) In the event that the negotiations do not result in an acceptable negotiated grant for a section 303 program in a State or area, the Secretary reserves the right to terminate the negotiation and (1) decline to provide funds for section 303 programs in that State or area for that fiscal year or (2) publicly by announcement in the FEDERAL REGISTER invite submission of new proposals for the State or area or (3) negotiate with any organization.

§ 97.218 Grant Award.

(a) At the conclusion of negotiations a grant document which incorporates the results of all negotiations shall be prepared in conformity with FMC 74-7.

(b) The Secretary shall make a grant award by providing the grantee with a grant agreement consisting of the Grant Signature Sheet, the Assurances and Certification form, the Program of Work, the Program Planning Summary, Budget Information Summary, and Grant Conditions.

(1) The Grant Signature Sheet specifies the amount obligated by the Department, delineates the terms of the grant, and contains the signatures of the Secretary and the grantee official.

(2) The Assurance Certification form is described in § 97.213(b)(4).

(3) The Program of Work shall be a summary statement of the Comprehensive Plan for Farmworkers and shall incorporate the amended Comprehensive Plan for Farmworkers by reference.

(4) Grant Conditions are special restrictions placed on the grant by the Secretary.

(c) The grant agreement becomes effective upon signature by the Secretary.

(d) In signing the Grant Signature Sheet, the grantee official indicates the grantee's acceptance of the grant and of all grant conditions incorporated therein. The grant agreement becomes operational upon signature by both the Secretary and the grantee official.

§ 97.219 Annual competition.

(a) At the discretion of the Secretary, a section 303 sponsor which has obtained a grant on the basis of competition may receive a grant for the following program year without competition.

(b) No grant shall be operated in any State or area for a period of more than two years without recompetition.

(c) Target areas open for competition will be announced by the Secretary.

§ 97.220 Modifications of grant agreement.

(a) *Major modifications.* (1) A major modification to the grant is required under any of the following conditions:

(i) Change in duration of the grant;

(ii) Change in grant allotment;

(iii) Change in the assurances and certifications;

(iv) Substantial change in program design and/or program goals defined as follows:

(A) When the cumulative number of participants to be served, planned enrollment levels for program activities, planned placement terminations, or participants to be served is to be increased or decreased by 15 percent or more.

(B) When the cumulative transfer of funds among program activities or cost categories exceeds $10,000 or 5 percent of the total grant budget whichever is greater; except as provided in § 97.255 (e)(5).

(C) When the program design is altered significantly such as when there is a change from the approved plan in the allowance payment system including but not limited to, the conditions of waiver or when there are changes in program design including but not limited to changes in the design in program activities or changes in target area(s).

(D) When the sponsor adds or terminates any subgrantee, contractor, or program operators.

(v) At the initiation of the Secretary as necessary after consultation with the grantee to assure compliance with the regulations and the approved plan and/or to insure responsiveness to changing economic conditions.

(2) Major grant modifications will not be initiated solely to adjust planned performance to meet actual performance.

(3) Prior approval of the Secretary is required for items covered in (a)(iv) (A), (B), (C), and (D) of this section.

(b) *Format.* Major modifications shall consist of the following:

(1) Revised Program Planning Summary Budget Information Summary for current and future quarters and a narrative explanation of the proposed changes as appropriate to the Secretary with a copy to the appropriate Regional Administrator.

(2) Each request for a modification must contain adequate documentation and analysis to support the request.

(3) Revised signature sheet.

(c) *Minor Modifications.* A sponsor may make any change in its Program Planning Summary, Budget Information Summary or narrative description which is not set out in paragraph (a) of this section without prior approval, but must show any such change in the first Program Status Summary or Financial Status Report as appropriate submitted to the Department after the change has been made. At the same time this report is submitted, an updated Program Planning Summary or Budget Information Summary shall also be submitted to the Secretary with a copy to the appropriate Regional Administrator; only those lines and columns affected by the modification need to be shown.

PROGRAM OPERATIONS

§ 97.230 General.

Sections 97.230-97.237 set forth the program operation requirements for grantees under section 303. The utilization of funds under section 303 is conditioned upon adherence to the Act, terms and conditions of the grant, the regulations under the Act and other applicable law.

§ 97.231 Basic responsibilities of grantees under Section 303.

A grantee shall be responsible for:

(a) Compliance with plans and assurances, Grant Conditions, and official written communications from the Department;

(b) Compliance with the Grant Administration sections of this Subpart C;

(c) Designing training which is, to the maximum extent feasible, consistent with every participant's fullest capabilities and will lead to employment opportunities enabling every participant to become economically self-sufficient.

(d) Designing program activities which will, to the maximum extent feasible, contribute to the occupational development and upward mobility of every participant;

(e) Providing services only to eligible farmworkers as defined in § 97.232 and their dependents;

(f) Providing training only to participants who are legally able to accept employment in the occupation for which training is being provided;

(g) Advising every participant of his or her rights and responsibilities prior to entering the program and granting the opportunity for an informal hearing as provided in § 97.234; and

(h) Making maximum efforts to achieve the goals set forth in the Program of Work.

§ 97.232 Eligibility for participation in Section 303 programs.

(a) Eligibility for participation in section 303 programs is limited to farmworkers and their dependents who have, during the 18 months preceding their application for enrollment: (1) Received at least 50 percent of their total earned income as agricultural workers during any consecutive 12 month period (time spent and income earned by individuals while employed in food processing establishments shall be counted as agriculture-related employment for eligibility purposes provided that the person spends at least 50 percent of his/her employment time in farmwork or derives at least 50 percent of his/her income from farmwork as defined in § 97.203); and

(2) Been employed in agriculture on a seasonal basis; and

(3) Been identified as economically disdvantaged as defined below:

(i) Member of a family which receives cash welfare payments; or

(ii) Member of a family whose annual family income in relation to family size does not exceed the poverty level determined in accordance with criteria established by the Office of Management and Budget (OMB). The "nonfarm family" tables shall be used in determining the poverty level for farmworker families.

(b) It shall be the responsibility of the grantee to establish the necessary procedures to ensure that participants meet the above eligibility criteria. Application forms will be completed for all participants, and the forms must contain sufficient information to determine whether or not the applicants meet the prescribed eligibility criteria.

(c) Citizenship shall not be used as a criterion to prevent persons from participating in a program. However, program participants shall be limited to nationals of the United States and aliens who have been accorded the privilege of residing in the United States as lawful permanent residents or are otherwise legally available for work in the United States.

(d) Participants in programs authorized under CETA Titles I, II, and VI and under other sections of Title III who met the eligibility criteria for section 303 at the time of their enrollment may also be transferred into or enrolled concurrently in the section 303 programs. Section 303 participants who met eligibility criteria for Title I at the time of their enrollment may also be transferred into or enrolled concurrently in the Title I program (§ 95.32(f) of this title).

(e) No section 303 service shall be provided to persons violating the terms of the Farm Labor Contractor Registration Act of 1963 as amended (Pub. L. 88-582, 78 Stat. 920, as amended by Pub. L. 93-518, 88 Stat. 1652).

§ 97.233 Types of program activities available.

(a) A grantee may provide any type of activity consistent with the purpose of section 303 of the Act. Such activities include, but are not limited to the placement of farmworkers and their dependents in jobs above the poverty level, training, education, and other services needed to enable a farmworker to improve his or her well-being and economic self-sufficiency. A program funded under section 303 may include any activity described in paragraph (c) of this section.

(b) A program funded under section 303 may not utilize section 303 funds to implement public service employment programs as described in Parts 96 and 99 of this title or to publish a newsletter in violation of the provisions of § 98.23 of this Subtitle.

(c) The basic types of program activities available to a sponsor include, but are not limited to the following: (1) *Classroom training.* (i) This program activity is any training conducted in an institutional setting designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs. It may also include training designed to enhance the employability of individuals by upgrading basic skills, including GED (General Education Development) opportunities to earn the equivalent of a high school diploma for farmworkers who dropped out of school; and the provision of other courses, for example, remedial education. Grantees whose target populations include a significant number of persons of limited English-speaking ability should include provisions for training in the primary language of such persons and/or training in English-as-a-second language or both.

(ii) Occupational training shall be designed for occupations in which skills shortages exist (section 105(a)(5)) and for which there is reasonable expectation of employment (section 703(10)). In making these determinations, a grantee shall utilize available community resources such as the local SESA office, the National Alliance of Businessmen, and similar organizations.

(iii) Alowances. Allowances and other benefits shall be provided in accordance with § 97.256.

(iv) Training agreements. Vocational classroom training may be supported with section 303 funds. In order to obtain such classroom services, grantees may negotiate either financial or nonfinancial agreements on either a class size or individual referrals basis with local educational institutions or boards.

(2) *On-the-job training.* (i) On-the-job training (OJT) is training conducted in a work environment designed to enable individuals to learn a bonafide skill and/or qualify for a particular occupation through demonstration and practice. Such training should be conducted on a "hire first, train later" basis, or with reasonable assurance of ultimate placement with an employer other than the training organization. Training shall be designed to lead to the maximum development of participants' potentials and to their economic self-sufficiency.

(ii) Inducements to employers. Grantees may provide payments or other inducements to public or private employers for the bona fide training and related costs of enrolling individuals in the program; provided that payments to employers organized for profit are only made for the costs of recruiting, training, and supportive services which are over and above those normally provided by the employer. Use of a formula which incorporates the trainee's wage as a factor and fixed unit cost contracting are acceptable methods of reimbursement to private-for-profit employers for extraordinary training costs associated with providing on-the-job training. When using a formula, the sponsor can reimburse the employer for extraordinary training costs for training on-the-job, up to a level not exceed 50 percent of entry level wages. Sponsors may design other methods of cost reimbursement provided that payments reflect only extraordinary training costs. However, use of designs other than the 50 percent method require prior approval of the Secretary.

(iii) Direct subsidization of wages for participants employed by private employers organized for profit is not an allowable expenditure (section 101(5)).

(iv) Labor organization consultation. Appropriate labor organizations shall be consulted in the design and conduct of on-the-job training programs where collective bargaining agreements exist with the employer.

(v) Participant benefits. Wages and other benefits provided to OJT participants shall be in accordance with conditions specified in § 97.257.

(3) *Work experience.* (i)(A) Work experience is a short-term and/or part-time work assignment with a public employer or a private non-profit employing agency and is designed to enhance the employability of individuals who have either never worked or who have not been working in the competitive labor population for an extended period of time, i.e., new or recent entrants into the labor force. The work experience activity is designed to increase the employability of such individuals by providing them with experience on a job, an opportunity to develop occupational skills and good work habits and an opportunity to develop specific occupational goals through exposure to various occupational opportunities.

(B) In addition, work experience may include a short-term work assignment while an appropriate classroom training or on-the-job training opportunity funded under this Act is being developed. Sponsors should limit the participation of individuals placed in work experience while an appropriate activity is being developed to 90 working days.

(C) Participation in work experience for purposes other than that indicated in paragraph (c)(3)(i)(B) of this section shall be for a reasonable length of time determined in accordance with the needs of the participant.

(D) Except as provided above, the participation in work experience of individuals whose only manpower need is for employment, e.g., unemployed individuals who have occupational skills and good work habits, is generally inappropriate.

(ii) Sponsors shall describe in their Comprehensive Plan for Farmworkers the basic design of their work experience activity, including the characteristics of participants who will participate in the work experience activity, the objectives of the activity and the duration and planned outcomes of work experience.

(iii) Work experience activities for youth include part-time employment for students attending school, short-term employment for students during summer, short-term employment for out-of-school youth adjusting to a work setting and in transition from school to employment, short-term employment for those youth who have no definite occupational goal, and short-term or part-time employment for youth for whom no training or job opportunity immediately exists.

(iv) Work experience for adults includes part-time or short-term employment for the chronically unemployed, retired persons, recently discharged military individuals, handicapped individuals, institutional residents and inmates and others who have not been working in the competitive labor population for extended periods of time.

(v) Sponsors shall periodically review the progress of each work experience participant to determine whether continued participation in work experience, transfer to another activity, placement in unsubsidized employment or some other action is most appropriate. The sponsor shall make this determination based on whether the purposes of the work experience activity described in paragraph (c) (3) (i) of this section have been achieved.

(vi) Program outcomes for work experience participants include (A) return to school; (B) enrollment in post-secondary education; (C) enlistment in the military services; (D) enrollment in manpower training and (E) placement in subsidized or unsubsidized employment.

(vii) Work experience in the private profit sector is prohibited.

(viii) Participant benefits. Each participant in a work experience activity shall receive wages. Wages shall be commensurate with such factors as the type of work performed, the geographic region of the program, and the skill proficiency of the participant.

(A) In no event shall the rate be less than the highest of the following: (*1*) The minimum wage rate specified in section 6(a) (1) of the Fair Labor Standards Act of 1938, as amended, except as provided in paragraph (B) below.

(*2*) The minimum wage prescribed by State or local law for similar employment;

(*3*) For participants on federally funded or federally assisted construction projects, the prevailing rate established by the Secretary, in accordance with the Davis-Bacon Act, as amended, when such rates are required by the Federal Statute, other than CETA, under which the assistance was provided.

(B) Wages in the Commonwealth of Puerto Rico shall be consistent with provisions of Federal, State or local law otherwise applicable.

(C) Participants in work experience activities shall be provided workmen's compensation and other fringe benefits as specified in § 97.257.

(ix) Work experience participants may be outstationed at worksites, including Federal agencies and private nonprofit agencies. Outstationed participants are still to be considered employees of the sponsor and shall be assured of the same working conditions and benefits, as specified in § 97.257 as received by other similarly employed employees of the sponsor (not the outstationed worksite).

(4) *Services to participants.* This program activity is designed to provide

those services which are needed: (i) To enable farmworkers and their dependents to obtain or retain employment or to participate in other program activities leading to their eventual placement in unsubsidized nonseasonal agricultural employment; or

(ii) To assist those farmworkers, who remain as seasonal agricultural employees, in improving their well-being.

(iii) Such services may include, but are not limited to, the following:

(A) Services to applicants.

(*1*) Outreach;

(*2*) Intake: This includes screening for eligibility, the initial assessment process to determine whether the program can benefit the individual and to determine the appropriate manpower activity to which the individual should initially be referred, a determination as to the availability of an appropriate manpower activity; a decision on selection; and dissemination of information on the program;

(B) Manpower services.

(*1*) Orientation;

(*2*) Counseling: This includes employment related counseling, testing, and vocational or career exploration;

(*3*) Referral to non-303 funded training and placement;

(*4*) Job development;

(*5*) Job placement;

(*6*) Follow-up.

(C) Supportive services (Training and non-training related).

(*1*) Health and medical services;

(*2*) Child care: Day care program shall meet Federal Interagency Day Care Standards and comply with applicable state standards including state licensing requirements.

(*3*) Transportation;

(*4*) Emergency assistance;

(*5*) Relocation assistance;

(*6*) Residential support;

(*7*) Nutritional services;

(*8*) Assistance in securing bonds;

(*9*) Referral to non-303 funded supportive services;

(*10*) Family counseling;

(*11*) Family planning services: Provided that such services are made available only on a voluntary basis and are not to be a prerequisite for participants in or receipt of any service of benefit from the program; and

(*12*) Legal services.

(D) Post-placement service. Manpower and supportive services as described in paragraphs (4)(iii)(A) and (B) of this section may be provided as appropriate to terminated participants who have been placed in unsubsidized employment. These services shall be provided at the discretion of the grantee and shall enable the terminated participant to retain employment. Such services may be provided during the 30-day period following a participant's termination from the program.

(E) Participant benefits. Allowances as described in § 97.256 may be paid to participants enrolled in manpower services as described in this paragraph (4)(iii) of this section when such services are a component of another activity as described in § 97.233 or when such services are provided on a regularly scheduled basis.

(5) Other activities. (i) These activities are manpower activities which are not described in the categories above or manpower-related activities designed to enhance the economic self-sufficiency of individuals who are eligible to participate in programs funded under section 303. This activity includes, but is not limited to high school equivalency programs and to tuition assistance projects (extended tuition support programs and other opportunities in post-secondary education). No individual may be a participant in a tuition support program for more than two years.

(ii) The approved Comprehensive Plan for Farmworkers must describe the basic design, and provide performance standards and a detailed budget for each of the "Other Activities" to be undertaken.

(iii) Participant benefits. Allowances as described in § 97.256 may be paid to a participant enrolled in "Other Activities" as described in paragraph (5) of this section when such activities are a component of other activity described in § 97.233 or when such activities are regularly scheduled and are described in the approved Comprehensive Plan for Farmworkers.

(6) Combined activities. A participant enrolled in any activity funded under the Act may be enrolled simultaneously in any other activity as a component of the participant's pri-

mary activity. The primary activity constitutes any activity in which the participant is enrolled for more than 50 percent of the scheduled time.

§ 97.234 Complaint procedure.

(a) Each grantee shall establish a complaint or grievance procedure for resolving any issue arising between it (including any subgrantee or contractor) and a participant or an individual denied participation under section 303.

(b) Such procedure shall include an opportunity for an informal hearing, and a prompt determination of any issue which has not been resolved in an informal manner. When the grantee proposes to take an adverse action against a participant, such procedures shall also include a written notice setting forth the grounds for any adverse action proposed to be taken by the grantee and giving the participant an opportunity to respond. Final determinations made after an opportunity to respond shall be so identified and provided to the participant in writing.

(c) Any person subject to the issue resolution requirements of this section may initiate the procedures provided in § 97.291(b) only after all remedies provided under paragraphs (a) and (b) of this section have been exhausted.

§ 97.235 Training for low wage industries; relocation of industries.

No participant may be enrolled in any activity or service under this Act in any low wage industry in jobs where prior skill or training is typically not a prerequisite to hiring and where labor turnover is high, nor may any authority conferred by this Act be used to assist in any relocation of an establishment from one area to another unless the Secretary determines that such relocation will not result in an increase in unemployment in the area of original location or any other area where the business entity conducts operations (sec. 704(a)).

§ 97.236 Cooperative relationships between grantee and other manpower agencies.

(a) Each grantee shall, to the extent feasible, establish cooperative relationships or linkages with other manpower and manpower-related agencies in the area within its jurisdiction, in particular, with agencies operating programs funded through the Department (sec. 105(a)(3)(D)), e.g., Job Corps. Grantees shall document linkages with other agencies. Documentation may include, but not be limited to, written memoranda of understanding, written agreements, or contracts and shall be available to the Secretary upon request.

(b) The establishment of such cooperative relationships or linkages shall include, at a minimum, contacting all appropriate Title I Prime Sponsor(s), SESA's, and farmworker programs, if any, in the target area prior to implementing the section 303 program of services and developing working relationships with them.

(c) Grantees shall, to the extent feasible, notify the appropriate apprenticeship agency of training activities in apprenticeable occupations (sec. 105(a)(3)(D)).

(d) Any grantee which intends to provide services under the Act to recipients of Aid to Families with Dependent Children (AFDC) should coordinate such services with the local sponsor of the Work Incentive Program, if any, to assure that the delivery of services under this Act is consistent with the WIN requirements. The provision of comprehensive manpower services to recipients of AFDC who are required to register for the WIN program may be affected by provisions of Title IV of the Social Security Act. Limitations on length of training, requirements to accept work in lieu of training, and other regulatory requirements may affect the AFDC recipient's participation in programs under the Act.

§ 97.237 Performance standards.

(a)(1) The purpose of this section is to establish comparative standards of performance for projects and activities funded under section 303. The Secretary will develop comparative performance standards, which will set national guidelines to serve as bench marks for the development and negotiation of individual grant performance standards in the grant agreement. The comparative performance standards will include, but are not limited to, the standards set forth in paragraph (b) of this section. The Secretary shall apply these standards when evaluating the quality and effectiveness of the components of section 303 programs.

(2) The performance standards contained in the individual grant agreement shall constitute the performance standards for that grant. For those projects and activities for which no comparative performance standards are provided in paragraph (b) of this section, the grant agreement shall specify levels of performance. Individual grants may include performance standards, developed by the grantee and approved by the Secretary, which will be in lieu of one or more of the comparative performance standards set forth in paragraph (b) of this section. In addition, the comparative performance standards are not intended to cover fully the requirements of local program operations so that most grant agreements should contain additional performance standards tailored to the specific goals and objectives of that grant. If the grant agreement does not contain performance standards, any comparative performance standard(s) applicable to the program activity or service funded shall apply after such standards are published in the FEDERAL REGISTER.

(3) Grantees shall maintain the documentation necessary for adequate demonstration of actual performance. This documentation shall be made available to the Secretary for the purposes of monitoring, evaluation, and auditing.

(4) It is the responsibility of the grantee to notify the Secretary if the grantee anticipates that performance standards may not be met and to request technical assistance in a timely manner. In order to do so, a grantee shall establish at least quarterly bench mark projections which will enable it to predict the likelihood of meeting its applicable performance standards.

(b) *Comparative performance standard for programs funded from allocable funds*—(1) *Administration.* Cost for administration not to exceed 20 percent of the total amount of the grant.

(2) *Referral.* (i) 100 percent of the goal identified in the grant achieved.

(ii) Followup completed on 85 percent of all those participants referred to other agencies for services.

(3) *Training and employment.* (i) 100 percent of enrollment, and referral goals identified in the grant achieved.

(ii) 80 percent of placement goals identified in the grant achieved.

(iii) 100 percent of all placements will be employed at a wage at or above the Federal or State minimum wage, whichever is higher.

(iv) 90 percent of all placements will be employed at a wage at or above the prevailing rate for the particular occupation in the geographic area.

(v) 75 percent of those placed continue to be on the job 90 days after placement in unsubsidized employment.

(4) *Classroom training and on-the-job training.* (i) 100 percent of enrollment goals identified in the grant be achieved.

(ii) 90 percent of enrollees in classroom training and on-the-job training and their families receive services.

(iii) 60 percent of those enrolled in classroom training are placed in unsubsidized employment after training either by their own efforts or through program efforts.

(iv) 75 percent of those placed in on-the-job training continue to be on the job 90 days after the completion of their training period.

(v) At least one-third of classroom training and OJT enrollees are placed in jobs paying at least $1.00 per hour above the Federal or State minimum wage, whichever is higher.

(5) *Day care.* (i) 90 percent capacity is maintained.

(ii) Cost per child for day care operations serving 0-5 year old children for an extended day of more than 8 hours of operation do not exceed a total cost of $200 per month. This cost will be based on total cost of operation including funds from sources other than section 303 grants.

(iii) Day care programs shall meet Federal Interagency Day Care Standards and comply with applicable State standards including State licensing requirements.

(6) *Medical services.* Average cost per family not to exceed $250. This

average cost is obtained by dividing the amount of funds available for this service by the number of families receiving this service. The maximum cost for any single family not to exceed $500.

(7) *Emergency assistance.* Average cost per family not to exceed $75. This average cost is obtained by dividing the amount of funds available for this service by the number of families receiving this service.

(8) *Relocation assistance.* Average cost per family not to exceed $600. This average cost is obtained by dividing the total amount of funds allowable for this component (set forth in the definition of relocation assistance in § 97.203) by the number of families in the relocation component. The maximum cost for any single family not to exceed $1,000.

(9) *Residential Support.* Average cost per family not to exceed $500. This average cost is obtained by dividing the total amount of funds allowable for this component (set forth in the definition of residential support in § 97.203) by the number of families in the residential component. The maximum cost for any single family not to exceed $700.

GRANT ADMINISTRATION

§ 97.250 Grant administration in general.

(a) Sections 97.250-97.273 describe Federal requirements relating to the administration by grantees of grants under section 303 of the Act.

(b) In general, administration of section 303 grants shall be governed by Part 98, Subpart A, "Grant Administration," of this Subtitle.

(c) Sections 97.251, 97.262, and 97.270 relate to grantees which are non-governmental organizations and set forth requirements applicable only to such organizations. Sections 97.252, 97.260, and 97.263, 97.269 set forth exception and variations from 29 CFR Part 98, Subpart A, which are applicable to all section 303 grantees. Sections 97.261 and 97.269(b)-97.272 provide additional grant administration requirements applicable to all section 303 grants.

(d) In Part 98, Subpart A of this Subtitle, (1) All reference to the "RA" shall read "the Secretary" when applicable to section 303 programs.

(2) FMC 74-4 and FMC 74-7, designed for public agencies, are hereby made applicable to private nonprofit section 303 grantees. At such time that GSA issues comparable FMC's for private nonprofit organizations, they shall supersede the above Federal Management Circulars.

§ 97.251 Private nonprofit organizations; financial management systems.

For private nonprofit organizations the requirements for financial management systems set forth in § 98.5 of this Subtitle shall apply in their entirety, and in addition the following requirements shall be observed:

(a) *Certification of accounting systems.* Before funds are released to a grantee receiving an initial DOL grant or to a grantee any of whose nongovernmental subgrantees has never administered DOL funds the grantee shall submit a statement to DOL certifying that its accounting system and/or that of the subgrantee(s) meets the standards set in paragraphs (1), (2), and (3) of this section.

(1) Prior to the release of funds of an initial DOL grant, the grantee shall have its accounting system surveyed and evaluated by an auditor. On the basis of the auditor's findings and conclusions, the Secretary shall determine whether the accounting system meets DOL's standard and, if not, whether to suspend the grant.

(2) The accounting system certification shall state that the grantee and/or the subgrantee(s) have established adequate accounting systems with appropriate internal controls to safeguard assets, to check the accuracy and reliability of their accounting data, to promote operating efficiency, and to encourage compliance with prescribed management policies and any additional fiscal responsibilities and accounting requirements established by DOL.

(3) The certification may be furnished by an independent certified public accountant, or an independent state-licensed public accountant.

(b) *Subgrantees.* A grantee shall not release or commit any grant funds to a new subgrantee unless it has received from the proposed subgrantee an accounting system certification appropriately modeled after those required in paragraphs (a) (1), (2) and (3) of this section. These certifications are to be obtained by the grantee from its subgrantees for retention among the grantee's records and need not be transmitted to DOL unless DOL requests them. DOL may disallow as a charge against the grant any funds released in violation of the requirement stated in this paragraph.

(c) The cost incurred by the grantee or subgrantee in providing certifications of accounting systems is not an allowable cost under section 303 unless such cost is approved as part of the Comprehensive Plan for Farmworkers.

§ 97.252 Audit.

The requirements for audit shall be as described in § 98.6 of this subtitle, except that the following special provisions shall apply:

(a) The term "prime sponsor" in § 98.6 of this subtitle for the purposes of section 303 shall mean grantee.

(b) The requirement for access to books, documents, papers, and records described in paragraph (a) of § 98.6 of this subtitle shall apply to all section 303 grantees, subgrantees, contractors and other program operators.

(c)(1) Audits conducted under the provisions of § 98.6(e) of this subtitle shall be subject to prior approval by the Secretary.

(2) The reference to every "two years" in § 98.6(e)(2) for the purposes of section 303 shall read "every year."

(3) The cost of "$100,000" in § 98.6(e)(2) for the purposes of section 303 shall read "$25,000."

§ 97.253 Reporting requirements.

"Reporting requirements in general," set forth in § 98.7 of this subtitle shall be superseded as follows:

(a) Each grantee will be required to submit four periodic reports which will be used by the Secretary to assess its performance in carrying out the objectives of the Act. These four reports are: (1) The Program Status Summary; (2) The Financial Status Report (These two reports replace the Quarterly Progress Report); (3) The Quarterly Summary of Participant Characteristics; and (4) The Report of Federal Cash Transactions. In addition, grantees may from time to time be required to prepare and submit reports requested by other Federal agencies for the performance of the legislative responsibilities of these agencies.

(b) In order to avoid duplication of payments by unemployment insurance and CETA programs, sponsors shall, upon request, provide SESA's a current list of all CETA participants enrolled in their programs receiving wages.

(c) *Program Status Summary and Financial Status Report:* The Program Status Summary and Financial Status Report requirements set forth in § 98.8 (a) and (b) of the Subtitle shall be applicable.

(d) *Quarterly Summary of Participant Characteristics:* The Quarterly Summary of Participant Characteristics requirements set forth in § 98.9 of this Subtitle shall be applicable.

(e) *Report of Federal Cash Transactions:* The Report of Federal Cash Transactions requirements set forth in § 98.10 of this Subtitle shall be applicable.

(f) In addition, special reports may be required by the Secretary.

(g) The reports required by paragraphs (b) and (c) of this section shall be prepared to coincide with the ending dates of Federal Fiscal Year quarters. These reports shall be sent by the grantee to be received by the Secretary no later than 30 days after the end of the reporting period. If a grantee's grant period ends on a date other than the end of a Federal fiscal quarter, a fifth set of reports covering the entire grant period will be required.

(h) Accountability must be maintained by the grantee for each of the activities authorized under the various Titles of the Act. Therefore, separate reports will be required for the section 303 grants.

(i) The Secretary reserves the right to require the submission of these reports by grantees more frequently than quarterly in cases where there appears to be a major negative deviation from the Program Planning

Summary or the Budget Information summary.

(j) Detailed descriptions of the forms required by paragraphs (c) and (d) are in the Forms Preparation Handbook and supplement.

(k) All required reporting shall be submitted directly to the Secretary at the following address:

U.S. Department of Labor.
Employment and Training Administration.
Patrick Henry Building—Room 7122.
601 D Street, NW, Washington, D.C. 20213.
Attention: Chief, Division of Farmworker Programs.

Copies of the reports required by paragraphs (a), (b), (c), and (d) of this section shall be sent to the appropriate RA at the time of submission to the National Office.

§ 97.254 Reallocation of funds.

The requirements regarding reallocation of funds set forth in § 98.11 of this Subtitle shall be superseded as follows:

(a) *General.* The Secretary may reallocate funds from a grantee under the circumstances and in accordance with the procedures described in this section.

(b) *Reallocation based on nonperformance.* (1) When the Secretary considers through review of the grantee's reports, monitoring, or auditing of the program that its performance may be inadequate or that it may have failed to comply with the Act or regulations, notice shall be given and opportunity shall be allowed for an administrative review as provided in § 97.292.

(2) If the Secretary then decides to reallocate funds based on a ground set forth in paragraph (b)(1) of this section:

(i) The grantee's plan for the area shall be revoked in whole or in part;

(ii) No further payments shall be made under this Act to the grantee, to the extent which the Secretary deems necessary; and

(iii) The grantee shall be notified of the amount of funds which shall be returned from unexpended funds paid to the grantee during that fiscal year.

(3) The Secretary shall make provision for the reallocation of funds to be used by an alternative grantee to service the area which was served by the grantee before the reallocation or the Secretary may serve such an area directly.

(c) *Reallocation based on need.* (1) In a limited number of circumstances, the Secretary may determine that the unobligated portion of a grantee's grant shall be reallocated to another area because the funds are not needed where they were originally allocated.

(2) Before reallocating funds as set forth in paragraph (c)(1) of this section, the Secretary shall determine that:

(i) The grantee's plan will be carried out without expending all the funds previously made available for that plan; and

(ii) The excess funds identified under paragraph (c)(2)(i) of this section cannot reasonably be expected to be needed in the following grant period.

(d) *Reallocation.* When the Secretary determines that funds should be reallocated based on the criteria in paragraph (c) of this section, the following actions shall be taken:

(1) *Notice of intent to reallocate funds.* When the Secretary determines that a reallocation is appropriate, the grantee shall be notified of the proposed action to remove funds from the grant. The notice shall include the basis for the proposed reallocation.

(2) *Comments by grantee.* The grantee shall be invited to submit comments on a proposed reallocation of funds out of its area. These comments shall be submitted to the Secretary within 30 days of receipt of the notice. The Secretary shall consider these comments before making a final determination to reallocate.

(3) *Notification of final determination.* The Secretary shall notify the grantee of the final determination after reviewing any comments submitted by the grantee. A final decision to reallocate funds of a grantee shall be published in the FEDERAL REGISTER, and a modification of the grant shall be made.

(4) *Reallocation procedures.* In reallocating such funds to supplement other grants, the Secretary shall first consider the need for additional funds by other grantees within the same State. A decision to increase a grant

with reallocated funds shall not be made without prior consultation with the grantee as to how the funds will be expended. Such a decision shall be published in the FEDERAL REGISTER with the announcement to the grantee(s) receiving additional allocations and the amounts.

(5) *Reallocated funds.* Reallocated funds shall not be considered allocabale funds for the purpose of paragraph (c)(2) of § 97.204, the "hold harmless" provision.

§ 97.255 Allowable Federal costs.

The requirements regarding allowable Federal costs set forth in § 98.12 of this Subtitle shall be superseded as follows:

(a) *General.* Except as modified in these regulations, Federal funds granted under the Act may be expended only for purposes permitted under the provisons of Subpart 1-15 of Title 41 of the Code of Federal Regulations. 41 CFR 1-12.2 applies to educational institutions, and 41 CFR 1-15.7 applies to state and local governments. Allowable costs include both direct and indirect costs.

(1) *Direct and indirect costs.* Direct costs are those which can be identified specifically with a particular cost objective such as an organizational unit, function or object, as well as ultimate cost objectives including specific grants, projects, contracts, and other activities. Indirect costs are those costs of a grantee organization which are not readily identifiable with a particular function or project but nevertheless are necessary to the general operation of the grantee organization and the conduct of the activities it performs. Indirect costs are usually grouped into a common pool and distributed to those activities which benefit from them through the expedient of an indirect cost rate.

(2) *Policies and procedures.* Cost allocation plans including indirect cost rate proposals shall be developed and approved in accordance with the applicable cost principles and procedures set forth in 41 CFR 1-3.7 and 41 CFR 1-15. Whenever costs jointly serve one or more CETA titles and CETA is the only source of funding, a cost allocation plan must be developed to allocate those costs among the title if these are shared services. These plans are to be used and retained for future audits. Where there are multiple sources of funding, such as other Federal programs or state or local funded programs simultaneously operated by the grantee organization, a cost allocation plan is necessary if there are shared services. This cost allocation plan must equitably allocate costs between the programs (and within the CETA program, among the various titles). All cost allocation plans must be approved in advance by the Secretary.

(b) *Restrictions on use of funds.* No funds granted under the Act may be used, directly or indirectly, as a contribution for the purpose of obtaining Federal funds under any other law of the United States which requires a contribution from the grantee in order to receive such funds, except if authorized under that law. However, the use of funds granted under one title of the Act as a matching contribution in order to obtain additional funds under another title of the Act is permitted.

(c) *Expenditures for repairs, maintenance and capital improvements and construction.* (1) Section 303 funds may not be expended for new construction (including additions to existing facilities) but may be expended for building repairs, maintenance, and capital improvements to existing facilities. These costs must be related to a facility or building which is used primarily for programs under the Act (sec. 702(b)).

(2) No funds for new construction (including additions to existing facilities) are allowable except as a part of a training program in a construction occupation. Training costs may include such items as instuctors' salaries, training tools and books, allowances or wages to participants (if appropriate) but may not include materials used in construction or land acquisition. Construction costs for training programs shall be allowable only when such construction would not normally be performed by an outside contractor.

(d) *Allowable cost categories.* Allowable costs shall be reported against the following cost categories: Administration; wages; training; fringe benefits; allowances; and services (sec. 101).

(1) Costs are allocable to a particular cost category to the extent of benefits received by such category.

(2) All grantees are required to plan, control, and report expenditures against the aforementioned cost categories.

(3) All grantees are responsible for assuring that subgrantees and contractors plan, control, and report expenditures against the aforementioned cost categories.

(4) When required by § 98.24 of this Part or State Unemployment Insurance Laws to pay unemployment insurance costs, sponsors shall plan for those obligations to be incurred during the grant year. This responsibility includes unemployment insurance charge which will be incurred by subgrantees and contractors because of unemployment insurance liabilities incurred under programs under the Act.

(e) *Classification of costs by category.* The following principles shall be followed in classifying costs by cost category:

(1) Participants' wages shall be charged to wages.

(2) Participants' fringe benefits shall be charged to fringe benefits (premiums for insurance with comparable coverage to workmens compensation for participants enrolled in classroom training and services to participants is considered to be a training or service cost as appropriate).

(3) Allowances paid to program participants shall be charged to allowances.

(4) Training costs consisting of goods and services which directly and immediately affect program participants shall be charged to training. Such costs should be those incurred for instruction of participants in either a work environment or classroom. Goods and services which have direct and immediate impact on participants are limited to those actually involved in the participant training process itself as opposed to those which are supportive of that process. For examples of training-related costs which may and may not be charged to training see paragraph (f)(4), Training.

(5) Supportive and manpower services costs which consist of goods and services which directly and immediately affect program participants shall be charged to Services. Goods and services considered to have direct and immediate impact on participants are limited to those actually involved in the process of providing participants with supportive and manpower services as opposed to those which are ancillary to that process. For examples of service-related costs which may and may not be charged to Services see paragraph (f)(5), Services.

(6) Administration costs shall consist of all indirect and direct costs associated with the management of the grant. Such costs are those which do not directly and immediately benefit participants but are necessary for effective delivery of direct participants benefits. These costs are generally identified with supervision, and management, fiscal and recordkeeping systems. These costs shall also include the administration costs both direct and indirect of subgrantees and contractors. For examples of administration costs see paragraph (f)(6), Administration costs.

(7) When contractors bill the grantee with a single unit charge containing costs which are chargeable to more than one cost category the grantee will endeavor to obtain the detail necessary to charge these costs to the proper cost categories. For unit charges such as tuition fees for which the necessary detail cannot be provided, an estimate of the breakdown of the single unit charge among cost categories will be obtained; except when such unit charges are normally billed as a single charge and the cumulate amount of the common charges such as tuition fees or doctors' bills do not exceed $25,000. These exempted charges do not need to be prorated among the benefitting categories but can be charged to the category receiving the most benefit. Any profit (or loss) should be prorated among all the affected cost categories.

(8) Classification of equipment costs present special problems since many items or equipment can be used for various purposes. In the case of multi-use equipment there must be a prora-

tion of cost, or, if there is a predominant usage relating to one cost category, a charge shall be made to that category.

(9) Any single cost such as staff salaries and/or fringe benefits which is properly chargeable to more than one cost category shall be prorated among the affected categories.

(f) *Costs allowable by each cost category.* Following are examples of costs properly chargeable to each of the cost categories.

(1) *Wages.* All wages paid to participants receiving on-the-job training in public or private nonprofit organizations, and all wages paid to participants in work experience will be allowed. Cost of living increases are considered wages. Wages paid to participants while receiving on-the-job training from a private employer organized for profit cannot be supported by funds under the Act (sec. 101(5)).

(2) *Fringe benefits.* Allowable fringe benefits costs for participants include but are not limited to the following: annual, sick, court and military leave pursuant to an approved leave system; employers' contribution for social security, employees' life and health insurance plans; unemployment insurance, worker's compensation insurance; and retirement benefits provided such benefits are granted as part of the approved Comprehensive Plan for Farmworkers. Unemployment insurance costs are allowable fringe benefits and shall be charged to the grant as they are incurred. Cost of living increases may not be charged to fringe benefits.

(3) *Allowances.* All allowances paid to program participants pursuant to § 97.256(a) shall be charged to this cost category.

(4) *Training.* Training costs include, but are not limited to the following: salaries, fringe benefits, equipment, and supplies of personnel engaged in providing training, books and other teaching aids; equipment and materials used in providing training to participants; classroom space and utilities costs; and that part of tuition and entrance fees which represent instructional cost having a direct and immediate impact on participants (see § 98.12(e)(7) for exceptions). The following are examples of costs not properly chargeable to training: General and administrative costs of the training facility, supervision, clerical support for non-instructors, and training (skill maintenance and upgrading) of instructors, staff travel except when such travel is an integral part of the instruction, costs of non-classroom space and utilities, transportation of participants to training sites, and cost of processing allowance payments. The compensation of individuals who both instruct participants and supervise other instructors must be prorated among the Training and Administration cost categories on the basis of time records or other equitable means. Similarly, tuition fees and the cost of supplies used in the course of both participant instruction and other activities should be prorated among the benefitting uses.

(5) *Services.* (i) Services include, but are not limited to services to applicants, manpower services and supportive services, as set forth in § 97.233(c)(4).

(ii) Services to applicants includes outreach, intake, and assessment.

(iii) Supportive services include child care, health care, medical and dental services, residential support, assistance in securing bonding, transportation, and family planning.

(iv) Manpower services include orientation, counseling, job development and job placement.

(v) Allowable service costs include, but are not limited to, salaries and fringe benefits, space, utility, equipment and travel costs when an integral part of the job of personnel engaged in providing services to participants (e.g., job developers, counselors, and outreach workers); and that part of single unit charges for child care, health care, and other services which represent only the costs of services directly beneficial to participant (see § 98.12(e)(7) for exceptions). Transportation of participants is properly chargeable to services.

(vi) The following are examples of costs not properly chargeable to services: General and administrative costs of the services provided; supervision, clerical support, staff training, travel of supervisory staff, rent and other facilities costs except as provided for in (iv), and costs of supplies, materials, and equipment not used directly in providing services to participants.

(6) *Administrative Costs.* (i) Administrative costs shall be limited to those necessary to effectively operate the program. They shall not exceed 20 percent of the total planned costs for the entire grant unless such additional costs have been approved in writing by the Secretary. Consultant services under contract must have the prior approval of the Secretary.

(ii) Supportive costs are comprised of general and administrative costs, overhead, and similar cost groupings representing the general management and support functions of an organization as well as secondary management and support functions. Included are salaries and fringe benefits of personnel engaged in executive, fiscal, personnel, legal, audit, procurement, data processing, communications, transportation, maintenance, and similar functions, related materials, supplies, equipment, office space costs, and staff training.

(iii) Direct program costs which are not an integral part of training and services provided participants are comprised of goods and services which neither contribute to the management and support functions of an organization nor directly and immediately affect participants. Included are direct program salaries and fringe benefits of supervisory and clerical personnel, program analysts, labor market analysts, and project directors. In addition, all costs of materials, supplies, equipment, space, utilities, and travel which are identifiable with these direct program administration positions shall be charged to administration. Some examples of administrative costs are the salary of a clerical assistant to a supervisor, that part of an instructor's salary representing time spent supervising other instructors, desk-top supplies used by supervisors and in general office administration, rent, depreciation or maintenance of non-classroom space, staff training, consultants' services under contract not involving direct training or services to participants, costs incurred in the establishment and maintenance of farmworker boards and advisory councils as provided in § 97.273 and costs of providing technical assistance to contractor and subgrantee staff.

(iv) Services normally chargeable to Administration when performed by staff personnel shall be charged to Wages or Fringe Benefits, as appropriate, when performed by program participants.

These services when performed by program participants, may not be paid by section 303 funds unless this use of participants' services has been described in the approved Comprehensive Plan for Farmworkers.

(g) *Travel costs.* (1) The cost of participant travel and staff travel necessary for the operation or administration of programs under the Act is allowable as provided herein.

(2) Travel costs of section 303 staff or board members are allowable only if the travel specifically relates to programs under section 303 and is within the CETA section 303 target area or for a Department sponsored or approved conference, meeting, etc. All other travel to be charged to the CETA section 303 grant shall require the prior approval of the Secretary. These costs shall be charged to administration.

(3) Travel costs of other grantee officials of multi-funded programs charged with overall grantee responsibilities (e.g., the Governor of a state or the chief executive of a political subdivision, or their immediate staff that do not have continuing programmatic responsibilities) are allowable if costs specifically relate to programs under the Act. Prior approval by the Secretary is not required. These costs shall be charged to administration.

(4) Travel costs for participants in administrative positions, are allowable when the travel is specifically related to the operation of programs under section 303. These costs shall be charged to administration.

(5) Travel costs, based on mileage, for participants using their personal automobiles in the performance of their jobs are allowable if the employing agency normally reimburses its other employees in this way. These

costs shall be charged to fringe benefits.

(6) Travel costs to enable participants to obtain employment or to participate in programs under the Act are allowable as supportive services but shall be restricted to the grantee's jurisdiction or within daily commuting distance, unless part of an approved component in the Comprehensive Plan for Farmworkers.

(7) Travel policies set forth in the Standardized Government Travel Regulations (SGTR) are required of all grantees, subgrantees and contractors. Where a grantee, subgrantee, or contractor, has a more restrictive travel policy than the SGTR, the more restrictive requirements shall be followed.

(8) Other travel requirements may be issued by the Secretary for private non-profit grantees.

(h) *Association Membership.* (1) CETA Section 303 sponsors are permitted to utilize grant funds to join those associations which provide bona fide, relevant technical and administrative services in support of Section 303 program efforts. The activities of such associations must be designed to contribute to the enhancement of professional and technical program knowledge.

(2) For membership dues or other membership-related costs to be allowable, the following conditions shall be observed: (i) The association's activities shall not violate the Anti-lobbying Act, 18 U.S.C. 1913, which prohibits organizations from using Federal funds "directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote, or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation. * * *"

(ii) The association shall not violate the principles contained in the assurances set forth in the Section 303 sponsor grant package regarding restrictions against political activities for Federal grantees.

(iii) Those organizations substantially involved in lobbying are inappropriate slections for membership by CETA Section 303 sponsors, (See 41 CFR 1-15.711-19.) However, affiliated associations which are offshoots of such lobbying organizations, and whose only activity is to foster information exchanges and professional growth, may be appropriate selections for membership, if it can be demonstrated that their activities are separate from the parent association, and that the affiliate association does not contribute to the support of the parent organization.

(3) Sponsors wishing to utilize grant funds for membership in associations must obtain the prior approval of the Secretary before initiating membership procedures. Sponsors should submit documents which show that the association meets the conditions set forth in § 97.255(h), as well as budget information detailing the sponsor's proposed costs related to the proposed membership.

(4) Sponsors who seek to join an association shall submit (or cause the association to submit) to the Secretary a copy of the corporate charters, bylaws, constitution, or any other pertinent official document which explains the purpose of the association and demonstrates that the association will not be involved in activities which would violate the standards set forth in this § 97.255(h). In the case of an association that is affiliated with an organization which conducts lobbying or political activities, the documentation must demonstrate that the activities of the association to be joined are separate from those of the affiliated organization.

(5) When the use of grant funds for membership in an association has been approved by the Secretary for one Section 303 sponsor, the Secretary will announce the approval and it will thereafter be unnecessary for any other 303 sponsor to submit the documentation required by paragraph (4) above.

(6) Sponsor reviews will be conducted by the Secretary to determine that the purposes of such memberships are being carried out, and that program and operations are thereby enhanced.

(7) The cost shall be for Section 303 membership rather than an individual person's membership.

(8) The cost of the membership shall be reasonably related to the value of the services or benefits received. Sponsors are authorized to use up to one-tenth of one percent of their respective Section 303 allocations annually, with a maximum of $750.00 for association-related costs.

(9) Association-related costs shall be incorporated in the sponsor's Section 303 grant budget, charged to the administration category, and as such, shall be subject to the standard 20 percent overall grant administrative cost ceiling.

§ 97.256 Training allowances.

The requirements for training allowances shall be as described in § 95.34 of this subtitle with the following special provisons:

(a) The term "prime sponsor" in § 95.34 of this subtitle for the purpose of section 303 shall mean grantee.

(b) The requirements for eligibility for allowances described in § 95.34(c) of this subtitle for programs funded under section 303 shall read: "Subject to the provision of § 95.34(j) of this subtitle and § 97.233, allowances shall be paid to participants for time spent in classroom training. In addition, allowances may be paid for time spent in other activities as specified in § 97.233(c)(5) or manpower services such as orientation and counseling. However, allowances for participation in manpower services for other activities shall be provided only if such activities are a component of another activity described in § 97.233, or participation is on a regularly scheduled basis described in the approved Comprehensive Plan for Farmworkers. Furthermore, no allowances will be paid for any course having a duration in excess of 104 weeks (sec. 111(a)).

§ 97.257 Wages.

(a) Participants in work experience shall be paid wages as required by § 97.233(c)(3)(viii).

(b) Participants in on-the-job training shall be compensated by the employer at such rates, including periodic increases, as are reasonable considering such factors as industry, geographical region, and trainee proficiency (sec. 111(b)). In no event shall the rate be less than the highest of the following:

(1) The minimum wage rate specified in Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. The exceptions to section 6(a)(1) shall not apply to on-the-job training participants, except as provided in paragraph (c).

(2) The State or local minimum wage for the most nearly comparable covered employment;

(3) The prevailing rates of pay for persons employed in similar occupations by the same employer; or

(4) The minimum entrance rate for inexperienced workers in the same occupation in the establishment or, if the occupation is new to the establishment, the prevailing entrance rate for the occupation among other establishments in the community or area or, any minimum rate required by an applicable collective bargaining agreement.

(5) For participants on federally funded or federally assisted construction projects, the prevailing rate established by the Secretary in accordance with the Davis-Bacon Act, as amended, when such rates are required by the Federal statute under which the assistance was provided.

(c) For hours spent in the production of goods or services, the rate of compensation to be paid to trainees by employers, public or private, shall be specified in a written agreement entered into by the training or employing facility and the prime sponsor.

(d) Wages in the Commonwealth of Puerto Rico shall be consistent with provisions of the Federal, State or local law, otherwise applicable.

§ 97.258 Minimum duration of training; reasonable expectation of employment.

(a) *Duration of training.* An individual shall not be referred for training in an occupation which requires less than two weeks of preemployment training unless there are immediate employment opportunities available in that occupation (sec. 703(8)).

(b) *Reasonable expectation of employment.* An individual shall not be referred to training unless the grantee determines, after utilizing available and appropriate community resources, that there is a reasonable expectation of employment for such an individual in the occupation for which the person is being trained (sec. 703(10)).

§ 97.259 General benefits and working conditions for program participants.

(a) Each participant in an on-the-job training or work experience under the Act shall be assured of workmen's compensation benefits at the same level and to the same extent as other employees of the employer who are covered by a state or industry workmen's compensation statute. Participants engaged in any CETA program activity, i.e., work experience, on-the-job training, classroom training, services to participants and other activities where others similarly engaged are not covered by an applicable workmen's compensation statute shall be provided workmen's compensation insurance or coverage under a medical and accident insurance policy for injury or diseases resulting from such participation. The costs of such insurance shall be charged to the appropriate cost category as provided in § 97.255.

(b) Each participant in an on-the-job training or work experience, shall also be assured of health insurance, unemployment insurance, coverage under collective bargaining agreements and other benefits at the same levels and to the same extent as other employee similarly employed, and to working conditions and promotional opportunities neither more nor less favorable than such other employees similarly employed (secs. 208(a)(4), 703(5) and 703(6)). Nothing in this section shall be interpreted to require coverage for health insurance, unemployment insurance and similar benefits for participants, such as, work experience participants, where there is no employee of the employer performing the same or similar work in the employment situation. In determining whether the work is the same or similar to that of a person regularly employed, the prime sponsor will take into consideration, but shall not be limited to, employment status, type of work performed, job classification and method of appointment to the position.

(c) Every participant must be advised prior to entering employment of the name of his employer, and of this rights and benefits in connection with his employment (sec. 208(a)(8)).

(d) No participant will be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health or safety. In the case of participants employed or trained for jobs inherently dangerous, e.g., fire or police jobs, participants will be assigned to work in accordance with reasonable safety practices. The provisions of section 2(a)(3) of Pub. L. 89-283 (relating to health and safety conditions) shall apply to such programs or activity (secs. 208(a)(5) and 703(5)).

(e) The requirements for participants retirement benefits shall be as provided in § 98.25 of this subtitle.

§ 97.260 Allocation of allowable costs among program activities.

The requirements regarding allocation of allowable costs among program activities set forth in § 98.13 of this subtitle shall be superseded as follows: The program activities against which program costs shall be planned, controlled and reported upon are: Classroom training; on-the-job training; work experience; services to participants; and other activities. The cost categories under each of these activities is defined in § 97.255(e). The extent to which these cost categories are chargeable to specific program activities is set forth below. Administration includes all allowable administrative costs directly associated with the program activity and a pro rata share of the grantee's administrative costs under section 303 not directly associated with any program activity.

(a) *Classroom training.* Cost categories chargeable are: administration, allowances, training, and services.

(b) *On-the-job training.* Cost categories chargeable are: administration, wages (with public or private nonprofit employers only), fringe benefits, training, and services.

(c) *Work experience.* Cost categories chargeable are: administration, wages, fringe benefits, training, and services.

(d) *Services to participants*—(1) *Manpower services.* Cost categories chargeable are:

(i) Administration.

(ii) Allowances. This includes all allowances paid for short periods of time to participants who are registered for training, but are waiting for startup of a component and includes additional allowances as described in § 97.233(f).

(iii) Services. This includes all manpower services including postplacement services which are not part of another program activity and which are provided to participants by a grantee, contractor, or subgrantee.

(2) *Supportive services.* These services include but are not limited to health and medical services, child care, emergency assistance, relocation assistance, residential support, nutritional services, and other supportive services. Cost categories chargeable are:

(i) Administration.

(ii) Services. This includes all supportive services, including postplacement services, which are not part of another program activity and which are provided to participants by a grantee, contractor, or subgrantee.

(e) *Other activities.* Cost categories chargeable are: administration, allowances, training and services.

§ 97.261 Bond coverage of officials.

(a) Prior to the release of funds to any grantee, public or private, DOL shall receive written assurance that arrangements have been made for appropriate bonding of grantee officials. This assurance may take the form of either a statement that no bond is needed because the conditions of paragraphs (b) have been met, or of a letter from a bonding company or agent stating the type of bond, amount and period of coverage, positions covered, and the annual cost of the bond which has been obtained.

(b) A bond need not be provided by a public grantee if funds are to be deposited in a public treasury and disbursed and audited by local and state public officials who normally perform these duties. In this case, the financial role of the officials of the grantee agency shall be limited to making withdrawals from the Federal Reserve System for deposit in the public treasury and certifying appropriate expenditures for disbursement. A grantee which is a public agency need not provide a new bond if all employees who are authorized to sign or countersign checks on the grantee's commercial bank account or to disburse cash are already bonded in an amount consistent with local requirements and practices.

(c) Private grantees shall take steps to secure blanket fidelity bond coverage in accordance with the following provisions:

(1) Coverage shall be secured in an amount equal to the average of funds to be expended each month, up to the aggregate amount of $25,000, whichever is less, for all persons authorized to sign or countersign checks or to disburse sizeable amounts of cash, such as for payrolls.

(2) Grantees shall assure that appropriate officials of subgrantees and contractors are bonded. Existing bond coverage on officials of subgrantees which are public agencies shall be considered acceptable. Coverage for officials of subgrantees and contractors which are private organizations shall be equal to the average of funds to be expended each month, up to an aggregate amount of $25,000. If a subgrantee or contractor will expend less than $1,000 per month in program funds, on the average, bond coverage shall not be required, but may be obtained and is an allowable cost.

§ 97.262 Basic personnel standards for grantees and subgrantees.

The basic personnel standards set forth in §§ 98.14, 98.21, 98.22, and 98.23 of this Subtitle shall be applicable to public grantees and to public subgrantees receiving section 303 funds. The following provisions shall be applicable only to private nonprofit grantees and to private nonprofit subgrantees receiving section 303 funds.

(a) *Personnel policies.* Each grantee and subgrantee shall maintain personnel policies and practices in accord with applicable laws and regulations, the provisions of §§ 98.21, 98.22, 98.23 of this Subtitle and the provisions of paragraphs (b) through (h) of this section. Such personnel policies must be in written form and available to the Secretary upon request.

(b) *Discrimination prohibited.* No grantee or subgrantee shall discriminate in its hiring and personnel procedures against any applicant for employment or any employee because of race, creed, color, national origin, sex, or age.

(c) *Opportunities for farmworkers.* Each grantee and subgrantee shall insure that its recruiting procedures afford adequate opportunity for the hiring and advancement of persons in the target population.

(d) *Prohibition against partisan political and sectarian activities.* In addition to the prohibitions described in § 98.23, of this Subtitle grantees and subgrantees shall assure that no program under section 303 involves sectarian activities and that neither section 303 funds nor the personnel employed in the program shall be engaged in the conduct of sectarian activities.

(e) *Nepotism.* The provisions of § 98.22 of this Subtitle shall apply to all grantees and subgrantees with the following special provision:

(1) The term "employed in an administrative capacity" in § 98.22(a) Subtitle for the purposes of section 303 shall mean employed in an administrative capacity or membership on a governing board.

(f) *Prohibition against acceptance of gifts and gratuities.* Employees of grantees and subgrantees shall not accept gifts, money, or gratuities from persons receiving benefits or services under the program, or performing services under contract, or otherwise in a position to benefit from an action of the grantee's employees.

(g) *Outside employment.* Grantees and subgrantees shall include the following provisions in their published personnel policies relating to outside employment of their employees: (1) Such employment shall not interfere with the efficient performance of the employee's duties in the DOL-assisted program;

(2) Such employment shall not involve a conflict of interest or conflict with the employee's duties in the DOL-assisted program;

(3) Such employment shall not involve the performance of duties which the employee should perform as part of employment in the DOL-assisted program; and

(4) Such employment shall not occur during the employee's regular or assigned working hours in the DOL-assisted program, unless the employee during the entire day on which such employment occurs is on annual leave, compensatory leave, or leave without pay.

(h) *Salaries and wages*—(1) *Minimum wage.* Employees shall be paid at a rate no lower than the applicable minimum wage. Subject to this minimum, the salary for each position supported by DOL funds shall accord with prevailing local practice for comparable positions in local public or private nonprofit agencies.

(2) *Wage comparability.* (i) Persons employed in carrying out programs financed under section 303 shall not receive compensation at a rate which is (A) in excess of the average rate of compensation paid in the area where the program is carried out to persons providing substantially comparable services; (B) less than the applicable Federal or State minimum wage rate, whichever is higher.

(ii) Some grantees or subgrantees are part of long-established private agencies which have merit systems and will apply these systems to section 303-supported employees. In these instances, all positions covered under such merit systems shall be deemed comparable and no extensive organizational reviews, position analyses, or comparability determinations shall be necessary; provided that these employees are filling positions or types of positions in existence before the agency or institution received a section 303 grant and that the salary scale has not been changed as a result of the grant.

(iii) Those grantees for which paragraph (h)(2)(ii) of this section is not applicable, shall establish wage rates for each section 303-supported position based upon a wage comparability study.

(3) *Salary and wage schedule.* Each grantee shall maintain an up-to-date salary and wage schedule. This schedule shall be based upon an up-to-date wage comparability study as described in paragraph (h)(2) of this section. Each position supported by section 303 funds shall: (i) be part of a salary and wage schedule which assigns a specific salary or wage range incorporating periodic increases to each position;

(ii) Be described in a written detailed job description identifying job functions and responsibilities;

(iii) Have specific qualifications required of each person to be hired into the position; and

(iv) Be distinguishable from every other position by reason of its responsibilities, and job functions; Positions requiring higher salaries or wages shall include higher levels of responsibilities commensurate with the salary. All such materials shall be incorporated into personnel policies, procedures, and practice manuals.

(4) *Promotions and salary increases.* Each grantee shall maintain as part of its personnel policies and procedures and practices manual detailed procedures for hiring new employees, promoting present employees and granting salary increases. Documentation shall be maintained for all such personnel actions to substantiate compliance with established procedures for all hires, promotions, and salary increases. Such documentation shall include identification of the procedures used to select new employees or promote present employees, and substantiation of the concerned individual's eligibility for such a personnel action.

(5) *Salaries over $20,000.* No employee engaged in carrying out program activities receiving financial assistance under section 303 shall be compensated from funds so provided at a rate in excess of $20,000 per year, without approval from DOL. An employee subject to the provisions of salary proration in paragraph (h)(5) of this section shall not be compensated from funds so provided at a rate in excess of the prorated share of $20,000, without approval from DOL. Exceptions shall be granted by DOL in cases where, because of the need for specialized or professional skills or prevailing local salary levels, application of the foregoing restrictions would greatly impair program effectiveness or otherwise be inconsistent with the purposes to be achieved by the program.

(6) *Prorating salaries.* In cases where an individual performs functions under several grants, their time shall be prorated among the different grants and the portion of the salary charged to the section 303 grant shall not exceed the percentage of time spent performing section 303 functions.

(7) *Employee benefits.* Shall be established in accord with prevailing practice in comparable public or private non-profit agencies.

(i) *Staff complaint procedures.* Each sponsor and subgrantee shall establish as part of their written personnel policies a staff complaint procedure for resolving any issue arising between it and a staff member hired with CETA section 303 funds. Such procedures shall include an opportunity for an informal hearing, and a prompt determination of any issue which cannot be resolved in an informal manner. When the sponsor (or subgrantee) proposes to take an adverse action against a staff member, such procedures shall require that a written notice be given to that staff member. The written notice shall set forth the grounds for any adverse actions proposed to be taken by the sponsor (or subgrantee) and give the staff member an opportunity to respond. Final determinations made after an opportunity to respond shall be so identified and provided to the staff member in writing.

§ 97.263 Non-Federal status of participants.

The requirements for this section shall be as described in § 98.28 of this subtitle.

§ 97.264 Grantee contracts and subgrants.

A grantee funded under section 303 may enter into contracts or subgrants under the provisions described in § 98.27 of this subtitle, except that the following special provisons shall apply:

(a) The procurement of contracts shall be in conformance with the standards in § 97.270.

(b) The requirements for cancellation described in § 98.27(e) of this subtitle for programs funded under section 303 shall read as follows:

> If a contractor or subgrantee does not comply with any requirement of the Act, the regulations promulgated under the Act, other applicable law, the grant agreement, grant conditions, or other grant terms or conditions which the Secretary has issued or shall subsequently issue during the period of the grant, the grantee shall cancel the contract or subgrant. Cancellations of subgrants are major modifications as described in § 97.221 and require approval by the Secretary.

(c) The reference in § 98.27(g) of this subtitle of the provisions of § 98.15 and § 98.16 shall read "the provisions of §§ 97.265, 97.266, and 97.268."

§ 97.265 Adjustments in payments.

The requirements for adjustments in payments shall be as described in § 98.15 of this Subtitle, except that the following special provisions shall apply:

(a) The term "Comprehensive Manpower Plan" for the purposes of section 303 shall mean Comprehensive Plan for Farmworkers.

(b) The Secretary may also make adjustments in payments as described in § 97.267. The adjustments need not be based on a ground set forth in § 98.15(a) of this subtitle.

§ 97.266 Termination of a grant.

The requirements for termination of a grant shall be as described in § 98.16 of this Subtitle, except that the following special provisions shall apply:

Section 98.16(a) shall be superseded as follows: If a grantee violates or permits a subgrantee or contractor to violate the regulations, grant conditions, or grant terms or conditions which the Secretary has issued or shall subsequently issue during the period of the grant, the Secretary may terminate the grant in whole or in part, unless the grantee causes such violation to be corrected within a period of 30 days after receipt of notice specifying the violation.

§ 97.267 Suspension and debarment.

In situations where there is adequate evidence that there has been substantial mismanagement of program funds under the Act, the Secretary may determine that a grantee be suspended from consideration for CETA section 303 funds. If suspension or debarment is proposed, the procedures set forth in the DOL Procurement Regulations, 41 CFR Subpart 29-1.6 will be followed.

§ 97.268 Grant closeout procedures.

The grant closeout procedures shall be as described in § 98.17, except that the following special provisions shall apply:

(a) Paragraphs (a), (b), and (c) of § 98.17 of this subtitle shall apply in their entirety, and in addition the following special provisions shall apply:

(1) Any contracts or subgrants which extend beyond the termination date or completion of the legal grant period, as permitted by § 98.27(g) of this subtitle shall not exceed six months, unless the grantee has been notified of its selection as a potential grantee for the succeeding fiscal year.

(2) The Secretary may make adjustments in payments of the unexpended funds committed under contracts and subgrants described in paragraph (a)(1) of this section at any time between the completion or termination date of the grant and the termination date or completion of the subgrant or contract.

(b) § 98.17(d) of this subtitle shall be superseded as follows: Upon closeout, the Secretary will insure that:

(1) Prompt payment is made to the grantee for reimbursement of costs under the grant being closed out.

(2) After the final reports are received, a settlement is made for any upward or downward adjustments which are made to the Federal share of the costs, including those described in paragraph (a)(2) of this section.

(3) The letter of credit is cancelled unless the grantee is a potential grantee for the succeeding fiscal year.

(4) Final program and fiscal audits are performed as soon as possible after the completion or termination date of the grant.

BEST DOCUMENT AVAILABLE

§ 97.269 Maintenance and retention of records.

The requirements for the maintenance and retention of records shall be as described in § 98-18 of this subtitle, except that the following special provisions shall apply

(a) The requirement for maintaining information on the work history of participants shall not apply to participants who are minor children.

(b) The term "State and local prime sponsors" for the purposes of section 303 shall mean grantees.

§ 97.270 Program income and limitations on program expenditures.

(a) *Program income.* Section 98.19 of this title prescribes the requirements relating to program income applicable to public grants and subgrantees. The requirements for private grantees and subgrantees shall be as follows:

(1) Private organizations shall be required to return to the Federal Government interest earned on advances of grant-in-aid funds. Interest income shall be returned to the Secretary within 30 days after the end of each grant quarter.

(2) Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds and royalties received from copyrights and patents during the grant period, shall be handled in accordance with grant conditions the Secretary has issued or shall subsequently issue during the period of the grant.

(3) Program income earned during the grant period which has been included in the Comprehensive Plan for Farmworkers shall be retained by the grantee and, in accordance with the grant agreement, shall be added to funds committed to the project and be used to further program objectives. Expenditures of program income shall be subject to the provisions of this part. Further, program income shall be expended according to the provisions of the Title of the Act under which the income was generated. All other program income earned by the grantee shall be returned to the Federal Government, except as provided by grant conditions the Secretary has issued or shall subsequently issue during the period of the grant.

(4) The grantee shall record the receipt and expenditure of revenues as a part of grant project transactions.

(b) *Limitations on program expenditures.* Program expenditures shall not be made prior to the effective date of the grant period as set forth in the grant agreement or as subsequently modified by DOL. Expenditures made before such date shall be disallowed unless approved by the Secretary in advance. If the grantee incurs expenditures in excess of the total amount of the approved program, the amount of the overexpenditure shall be absorbed by the grantee from nonsection 303 funds.

§ 97.271 Procurement standards.

(a) The standards to be used for the procurement of supplies, equipment, and other materials and services by State and local governments with Federal grant funds shall be those described in § 98.20 of this subtitle.

(b) The standards to be used for the procurement of supplies, equipment, and other materials and services by private grantees and subgrantees shall be those described in the Federal Procurement Regulations, the Property Handbook for MA Contractors issued by the Department, and 41 CFR 1-5.2 or 41 CFR 1-15.3. On-the-job training contracts are not subject to sole source approval requirements and the procurement of subgrants is exempt from procurement requirements. When on-the-job training contracts are made, the grantees shall maintain a record of the name of the contractor, the amount and the services to be provided, and such record shall be available to the Secretary upon request. The foregoing standards are prescribed to assure that such materials and services are obtained in compliance with the provisions of applicable Federal laws and Executive Orders.

(c) The definitions of subgrant and contract described in § 98.20(a)(1) and (a)(2) of this subtitle shall also be applicable to grantees which are nongovernmental organizations.

(d) Sponsors shall obtain prior approval from the Secretary for all purchases of nonexpendable property as defined in the Property Handbook for MA Contractors.

§ 97.272 Labor standards.

All laborers are mechanics employed by contractors or subcontractors in the construction, alteration or repair, including painting and decorating, or projects, buildings, and works which are federally assisted under a grant shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-5).

§ 97.273 Allowances and reimbursements for board and advisory council members.

(a) *General.* A reasonable allowance to members who attend meetings of any board, council, or committee, and reimbursement of actual expenses connected with those meetings are allowable costs; but grant funds shall not be used to pay such allowances to any individual who is a Federal, State, or local government employee, or to an employee of a grantee or subgrantee.

(b) *Allowances.* Any person who is a member of a private nonprofit grantee or subgrantee policymaking body or of a public agency grantee or subgrantee farmworker advisory council is eligible to be paid an allowance; provided (1) such person's family income falls within OMB Poverty Guidelines and (2) the person is not a Federal employee, an employee of a DOL-assisted organization, or an employee of a State or local public agency. Allowances shall not exceed five dollars per meeting, unless the grantee's chief elected official or governing board determines a higher payment more suitable. Allowances in excess of five dollars shall be approved in advance by DOL. No person shall be paid an allowance by any one DOL-assisted organization for attendance at more than two meetings per month, regardless of whether the meetings are for the same or different policymaking bodies.

(c) *Reimbursements.* (1) Any person, whose family income falls within OMB Poverty Guidelines and who is a member of a private nonprofit grantee or subgrantee policymaking body or of a public agency grantee or subgrantee farmworker advisory council shall be eligible for reimbursement of actual expenses, including actual wages lost up to $18 a day. Receiving an allowance shall not preclude receiving reimbursement for actual expenses incurred in attending that meeting.

(2) Where the community served by the program covers a large geographic area, as in the case of a multi-county or a statewide grantee, reimbursements may also be made to those nonpoor members of a policymaking body who must travel a substantial distance from their home to attend meetings within the community. The grantee's principal representative board shall determine what constitutes a "substantial distance" in its community.

(3) Persons may be reimbursed no more than two meetings per month. A grantee desiring to make reimbursement to an individual for more than two monthly meetings shall obtain the prior approval of DOL.

(4) The grantee shall define which expenses may be reimbursed, whether incurred as the result of actual attendance at meetings or in the performance of other official duties and responsibilities in connection with the program, and shall establish procedures for the reimbursement of such expenses. The grantee shall obtain the approval of the Secretary for such definitions and procedures prior to reimbursing any individuals under the provisions of paragraphs (c) (1) and (2) of this section.

(d) *Administrative cost.* Allowances and reimbursement as described in paragraphs (a), (b), and (c) of this section shall be charged to the cost category "Administration". Allowances and reimbursement cost for governing Boards and Advisory council should be prorated as administrative costs among all of the grants, from whatever source, administered by the grantee.

ASSESSMENT AND EVALUATION

§ 97.280 Assessment and evaluation.

Assessment and evaluation of section 303 programs shall be conducted in accordance with § 98.30 through § 98.33

of this subtitle. Moreover, the Secretary of Labor shall obtain the approval of the Secretary of Health, Education, and Welfare with respect to direct arrangements by the Secretary of Labor for the provision of basic education and vocational training. This approval shall focus on the legality and quality of such service arrangements as well as the relationships of such services to those being delivered under other applicable laws for which the Secretary of Health, Education, and Welfare is responsible (section 306 of the Act).

ADMINISTRATIVE REVIEW

§ 97.290 Purpose and policy.

Sections 97.290 through 97.292 set forth the procedures established by the Secretary for (a) the receipt, investigation, and determination of formal allegations of denial of services by a grantee or subgrantee to participants in a section 303 program or to any individual who may have been eligible for services under section 303; and (b) the review of Petitions for Reconsideration arising out of the procedures for determining potential grantees for allocable funds.

§ 97.291 Procedure for complaints by eligible individuals and program participants.

(a) *Grantee administrative remedies.* An individual denied services who may have been eligible, or an aggrieved participant in a program under section 303, must exhaust the administrative remedies established by the grantee for resolving matters in dispute prior to utilizing the procedures under this section. An individual denied service who may have otherwise been eligible or an aggrieved participant may initiate an action under this review procedure within 30 days of any final decision by a grantee. The filing of a formal complaint under this section shall not automatically act as a stay of the decision rendered by the grantee, but such decision may be stayed at the discretion of the Secretary.

(b) *Complaints: Filing of formal allegations; dismissal; form; contents of formal allegations, amendments; investigations.* Procedures for complaints filed pursuant to this section shall be as provided in §§ 98.42 through 98.45 of this subtitle except that all formal allegations shall be filed with the Secretary and the term "Comprehensive Manpower Plan" for the purpose of section 303 shall mean Comprehensive Plan for Farmworkers.

§ 97.292 Procedure for complaints arising from the selection of potential grantees.

(a) *Administrative remedies.* Potential grantees shall be determined according to the procedures described in §§ 97.213 through 97.215. An applicant which wishes to object formally to its nonselection as a potential grantee, after consideration by the Secretary as provided in § 97.214, may file a Petition for Reconsideration with the National Office within 14 days of the notification of the Department's decision not to award a grant. Reconsideration under this section will not be given to objections by potential sponsors regarding the subjects of negotiation listed in 97.217.

(b) *Petition for Reconsideration.* A Petition for Reconsideration shall be a written statement by a responsible official of the complainant requesting a review of the nonselection and may enumerate the factors which the applicant asserts should be reviewed in reconsidering its Funding Request, but such enumeration is not required.

(c) *Reconsideration.* (1) Upon receipt of the Petition for Reconsideration, the Secretary shall, within 14 days, make one of the following determinations:

(i) That the organization be designated a potential grantee.

(ii) That the Granting Officer's decision be sustained.

(2) The representative of the Secretary responsible for resolution of the Petition for Reconsideration shall be an official of the Employment and Training Administration not directly involved in the original determination. The determination described in paragraph (c) (1) of this section shall be final.

Subpart D—Special Target Groups and Youth Programs and Other Special Programs

AUTHORITY: Comprehensive Employment and Training Act of 1973 (Pub. L. 93-203, sec. 602(a), 87 Stat. 839) unless otherwise noted.

SOURCE: 41 FR 10775, Mar. 12, 1976, unless otherwise noted.

GENERAL

§ 97.301 Scope.

(a) Pursuant to section 301 of the Act, the Secretary will use funds available under Title III of the Act to provide additional manpower services as authorized under Title I and Title II of the Act to segments of the population that are in particular need of such services including youth, offenders, persons of limited English-speaking ability, older workers, and other persons who the Secretary determines have particular disadvantages in the labor market. The Secretary shall take into account the need for continued funding of programs of demonstrated effectiveness.

(b) Pursuant to section 304 of the Act, the Secretary may use funds available under Title III of the Act to provide financial assistance in urban and rural areas, including areas having large concentrations or proportions of low-income, unemployed persons, and rural areas having substantial outmigration to urban areas, for comprehensive work and training programs and necessary supportive and followup services.

(c) In combination, sections 301 and 304 of the Act enable the Secretary to respond directly through the implementation and financial support of manpower programs and services, to manpower problems of special significance as these problems become apparent from time to time. The Secretary intends to exercise authority under these two sections in a flexible manner, flexibility being necessary to meet shifting manpower needs and priorities both swiftly and decisively. The use of this authority will not be limited to permanently fixed and narrow purposes.

§ 97.302 Purpose.

(a) The purpose of this Subpart D is to prescribe the Department of Labor's rules and regulations that govern:

(1) Identifying on a continuing basis the manpower problems of special significance which might be resolved, in whole or in part, through programs and services required under section 301 and authorized under section 304 of the Act, or both;

(2) Allocating resources available under Title III of the Act to alleviate specific problems identified;

(3) Awarding Federal financial assistance necessary to carry out individual programs under section 301 or section 304 of the Act; and

(4) Administering and operating individual programs under section 301 or section 304 of the Act.

(b) This Subpart D contains the regulatory material necessary for the implementation and operation of programs under sections 301 and 304 of the Act, including specific references to rules and requirements which are set forth in other parts of Title 29 and which are applicable to programs under this subpart.

(c) When the regulations set forth in this subpart conflict with other regulations promulgated under the Act in 29 CFR Parts 94 through 99, the regulations contained in this subpart shall prevail and apply to programs under this subpart.

(d) The regulations in this part govern programs funded under the Comprehensive Employment and Training Act of 1973 prior to amendment and reauthorization in 1978 (Pub. L. 95-524, 92 Stat. 1909), and are thus in many particulars superseded by regulations implementing the reauthorized Comprehensive Employment and Training Act, Pub. Law 95-524, 92 Stat. 1909, which are being codified at 20 CFR Parts 675 *et seq.* Any questions regarding the applicability of any particular regulation in Title 29 should be addressed to the Regional Administrator for the Employment and Training Administration.

[41 FR 10775, Mar. 12, 1976, as amended at 44 FR 37911, June 29, 1979]

§ 97.303 Definitions.

Definitions for abbreviations and major terms used in this subpart are contained in § 94.4 of this title. Additional terms applicable only to this subpart or having special significance in this subpart are defined as follows:

"Affirmative action effort" shall mean a program effort intended to provide or foster new employment opportunities for members of groups which have, for reasons of past custom, historical practice, or otherwise, been discouraged from entering certain occupational fields.

"Job search and relocation assistance" shall mean assisting an individual by locating a job opportunity that meets the individual's specific needs and by providing assistance, including financial support, to relocate the individual and the family near the new job site.

"Limited English-speaking ability" shall mean an inability to speak the English language which impairs a person's ability to seek or obtain employment.

"Local government" shall mean a local unit of government including specifically a county, municipality, city, town, township, local public authority, special district, intrastate district, council of governments, sponsor group representative organization, and other regional or interstate government entity; for the purposes of §§ 97.341 through 97.355, "local government" shall also mean any agency or instrumentality of a local government exclusive of institutions of higher education, hospitals, and school districts.

"Program," except where the context indicates otherwise, shall mean a program, project or service funded and carried out under this subpart.

"Skill improvement training" shall mean training given to an individual to make that individual more employable or to increase the possibilities of retention in his chosen field.

"State" shall mean any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States; for the purposes of §§ 97.341 through 97.355 "State" shall also mean any agency or instrumentality of a State exclusive of institutions of higher education and hospitals.

"Training for technological change" shall mean training given to an individual who faces unemployment or underemployment caused by newly emergent technology in an occupational field.

"Upgrading training" shall mean training given to an individual who needs such training to advance above an entry-level or dead-end employment position.

ALLOCATION OF AVAILABLE RESOURCES

§ 97.304 General.

The Secretary will allocate funds made available to carry out the purposes of sections 301 and 304 of the Act to resolve, in whole or in part, specific and identifiable manpower problems of special significance. These problems may be identified and funds allocated on bases which include, but are not limited to:

(a) Severe employment and training problems and needs which are identified as being common to members of specific segments of the population such as those indicated in § 97.301(a);

(b) Severe employment and training problems and needs which are identified as being special to certain geographical areas of the country, such as areas having a large concentration or proportion of low-income, unemployed persons, and rural areas having substantial outmigration to urban areas;

(c) The need, if any, to continue funding of programs of demonstrated effectiveness;

(d) Severe manpower and training problems and needs identified as existing within critical industries or occupational fields;

(e) Emergency or disaster; and

(f) Any other basis which is appropriate to national manpower priorities and emphases as they evolve from time to time.

§ 97.305 Allocation planning.

The Secretary will develop an allocation plan for the sum of money made available each fiscal year to carry out the purposes of sections 301 and 304 of the Act. The allocation plan will be designed to:

(a) Identify each specific manpower problem of special significance for which resources will be allocated;

(b) Indicate the approximate level of resources to be allocated for each problem identified;

(c) Indicate, in brief, the types of programs to be implemented with resources allocated for each problem identified;

(d) Indicate, to the extent possible, the geographical areas to be served by planned activities;

(e) Indicate the effects or benefits anticipated from the programs or services to be implemented; and

(f) Provide any background or explanatory material which might be necessary for a full understanding of the priorities and methods reflected in the plan.

§ 97.306 Public notification.

(a) The Secretary will notify the public of the plan for allocating the sum of money made available each fiscal year to carry out the purposes of sections 301 and 304 of the Act. This notification will be accomplished by publication in the FEDERAL REGISTER. The published plan will contain all elements specified in § 97.305 and will, if possible, be published prior to the fiscal year covered by the plan.

(b) The plan will not limit the Secretary in allocating funds in a manner or for specific purposes other than those set forth in the plan. The purposes of this notification process do not include committing the Secretary to any fixed plan or order of priorities. The sole purposes to be served in this notification process are:

(1) To inform the public with respect to current planning of Department of Labor manpower activities;

(2) To inform prime sponsors of manpower problems judged to be of special significance and impact on the well-being of the country; and

(3) To provide prime sponsors and other agencies responsible for conducting manpower or related programs with general information useful for planning their own operations.

(c) The Secretary may, at any time, revise the plan or implement operational deviations from the plan. The Secretary will, however, notify the public as soon as is practicable of any material revision to the plan or any major operational deviations from the plan. This notification will be published in the FEDERAL REGISTER and will include any background or explanation material necessary for a full understanding of the action taken or to be taken.

AWARD OF FEDERAL FUNDS

§ 97.307 General.

(a) The Secretary may make such grants, contracts, or other agreements which provide for the award of Federal funds as may be necessary to carry out the purposes of sections 301 and 304 of the Act.

(b) Any grant, contract, or other agreement under this subpart which involves the award of Federal funds will be developed and executed in accordance with the provisions set forth in § 97.308 through § 97.315.

§ 97.308 Eligibility for funds.

The Secretary may award funds available under this subpart to carry out the purposes of sections 301 and 304 of the Act to the following types of organizations:

(a) States and agencies of a State;

(b) Units of general local government and their agencies;

(c) Consortia which have been approved by the Department as prime sponsors under Title I of the Act which are made up of:

(1) Units of general local government; or

(2) A State and a unit or units of general local government;

(d) Public and private nonprofit organizations other than political parties;

(e) Private, profitmaking organizations;

(f) Other Federal establishments and agencies; and

(g) Indian tribes of Federal or State reservations and other Indian and Native American organizations eligible for funds under Subpart B of this part.

§ 97.309 Soliciting applications for Federal funds.

(a) The Secretary may solicit or request eligible organizations to submit a proposal or application for funds.

(b) The Secretary may limit solicitation to organizations which have special or unique capabilities to operate a program.

(c) When soliciting proposals from private, profitmaking organizations, the Secretary may issue a formal Request for Proposal.

(d) A solicitation or request to submit a proposal or application for funds is not an assurance or commitment that a proposal or application will be approved or accepted for funding.

(e) The Secretary may solicit or request a proposal or application for funds at any time.

(f) Funds allocated to carry out the purposes of section 304 of the Act are allocated for specific geographical areas. In awarding funds to carry out the purposes of section 304 of the Act, the Secretary will give primary consideration to awarding funds to prime sponsors which are responsible for the jurisdiction or jurisdictions in which Federal assistance is to be provided. In this respect, the Secretary will not solicit or request proposals or applications for these funds from other eligible organizations until consultation with the appropriate prime sponsors, if any, discloses that award of funds to an eligible organizations other than the prime sponsor would enhance program effectiveness.

(g) In soliciting proposals or applications for funds the Secretary may specify detailed program requirements to which the proposal or application must assure adherence as a condition for approval or acceptance. These specifications may include, but are not limited to:

(1) The type of manpower program to be conducted;

(2) The target group to be served;

(3) The geographic area in which the program is to be carried out;

(4) Minimum quantifiable performance goals;

(5) The results and benefits expected; and

(6) The approximate costs, including any sponsor contribution the Secretary may require.

[41 FR 10775, Mar. 12, 1976, as amended at 42 FR 30368, June 14, 1977]

§ 97.310 Submitting a proposal or application.

(a) When the Department solicits proposals or applications for a specific type of program under this subpart, the solicitation will contain instructions for eligible organizations with regard to submission of the proposal or application, including time frames; the need, if any, to provide a preliminary notification of intent to apply for funds, and the receiving office or offices.

(b) Before preparing and submitting an unsolicited proposal or application, eligible organizations are strongly encouraged to contact the Department for information concerning the availability of funds and the specific procedures involved in the preparation and submission of a proposal or application. In this regard, interested parties should contact:

Director, Office of Comprehensive Employment Development, Employment and Training Administration, U.S. Department of Labor, Room 6000, Patrick Henry Building, 601 D St., N.W., Washington, D.C. 20213.
Attention: ONP.

(c) The State and area-wide planning and development clearinghouse notification and review procedures set forth in Office of Management and Budget (OMB) Circular A-95 do not apply to programs under this subpart.

§ 97.311 Proposal or application format and content.

(a) Where the applicant is a State government or a local government, the application shall follow the format prescribed in Federal Management Circular (FMC) 74-7, Attachment M.

(b) Where the applicant or proposer is an organization other than a State government or a local government, the application or proposal shall be prepared in a format prescribed by the Department.

(c) As a condition for approval or acceptance, a proposal or application for funds must indicate or contain the following:

(1) The performance period of the program;

(2) A program budget for the Department's share and, if applicable, the program sponsor's share which accounts for administrative costs, participant allowances, participant wages, participant fringe benefits, training costs, and participant services costs;

(3) The need for the program and its objectives, including a precise indication of the target group or groups to be served;

(4) The results or benefits to be derived from the program, including the benefits which will accrue to program participants;

(5) A description of the separate functions of the program and the methods and procedures to be used in performing these functions, including, as appropriate:

(i) Recruitment and selection of participants;

(ii) Assessment of participants;

(iii) Orientation;

(iv) Counseling;

(v) Classroom training or education;

(vi) Payment of training and other allowances;

(vii) On-the-job training;

(viii) Subsidized community service or public service employment;

(ix) Work experience;

(x) Job development;

(xi) Job placement and followup;

(xii) Supportive services to participants such as health care and medical services, child care, residential support, assistance in securing bonds, and family planning assistance; and

(xiii) Other manpower activities such as the removal of artificial barriers to employment, job restructuring, revision or establishment of merit systems, and the development and implementation of affirmative action plans.

(6) Quantified performance goals;

(7) The steps to be taken by the program sponsor to evaluate program performance in comparison with program goals;

(8) Procedures for establishing cooperative relationships, liaison and working linkages with other manpower and manpower related agencies;

(9) Program activities to carry out under contract, subcontract, or subgrant with justification therefor;

(10) The specific geographic location or locations of program activity including, in cases of multistate programs, a state-by-state breakout as to funds budgeted and numbers of participants planned;

(11) The program staff structure, including brief position descriptions for professional staff and program administrators;

(12) The arrangements or agreements made with any labor organization which is necessarily connected with the program;

(13) If the applicant or proposer is an organization other than an agency of government and if requested by the Department, a description of the general structure of the organization and a certified statement by a Certified Public Accountant attesting to the adequacy of the applicant's or proposer's financial management system; and

(14) The completed forms, provided by the Department, which contain assurances and certifications required of program sponsors by statute and regulation.

[41 FR 10775, Mar. 12, 1976, as amended at 42 FR 30368, June 14, 1977]

§ 97.312 Review.

(a) The Secretary will review and consider for approval or acceptance each proposal or application for funds which is submitted in response to a specific solicitation or request made by the Secretary.

(b) The Secretary may review and consider for approval or acceptance any unsolicited proposal or application for funds submitted by an eligible organization other than a private, profitmaking organization.

(c) [Reserved]

(d) When reviewing and considering a proposal or application, the Secretary will determine whether:

(1) It meets the requirements of the Act, the regulations promulgated under the Act, and other applicable law;

(2) It is complete;

(3) It contributes to the implementation of the allocation plan described in § 97.305;

(4) The planned expenditures for program activity and services are substantiated and reasonable;

(5) The performance goals set forth are reasonable in view of past program experience in the same or similar activity and conform with documentation provided by the proposer or applicant;

(6) Operational methods are adequate;

(7) Administrative costs are reasonable and properly justified;

(8) The applicant or proposer evidences adequate internal administrative controls, accounting procedures, personnel standards and other capabilities that assure effective use of government funds; and

(9) Sufficient funds are available under the Act to fund the program in whole or in part.

[41 FR 10775, Mar. 12, 1976, as amended at 42 FR 30368, June 14, 1977]

§ 97.313 Rejection of a proposal or application.

(a) When the review of a proposal or application reveals that it is not approvable, the Secretary will notify the proposer or applicant in writing that the proposal or application is rejected. This notification shall include the reason or reasons for rejection.

(b) The rejection of a proposal or application is a final act.

(c) A rejection will not prejudice the review and consideration of any future proposal or application submitted by an eligible organization.

(d) The notification described in paragraph (a) of this section is not required with respect to any unsolicited proposal or application.

§ 97.314 Negotiation.

(a) When the review of a proposal or application reveals that it is generally adequate for favorable consideration, the Secretary may negotiate with the eligible organization to arrive at an agreement which is advantageous to the Department. The subjects of negotiation may include, but are not limited to:

(1) Separate program functions or components;

(2) Subgrantees, contractors, or subcontractors;

(3) Funding level and budget line items;

(4) Program objectives; and

(5) Performance standards.

(b) The Secretary may reject any separate program function or component described in the proposal or application when he determines it will not serve the purposes of the Act.

(c) The Secretary may, if negotiation does not result in a mutually acceptable conclusion, reject the subject proposal or application. In this event, written notification shall be provided to the eligible organization in accordance with § 97.313.

§ 97.315 Award.

(a) The Secretary may, if a proposal or application assures an agreement which is advantageous, approve the proposal or application and award funds without negotiation.

(b) The Secretary may also approve a proposal or application as revised during negotiation.

(c) Award of funds will be accomplished through the execution of a legally binding agreement in document form. The document, which will be prepared by the Department, will contain:

(1) The proposal or application as approved by the Secretary; and

(2) Department of Labor requirements for program administration.

(d) When the program sponsor is a unit of State or local government, the Secretary will use a grant agreement to implement the program and award funds.

(e) When the program sponsor is a nonprofit organization, public or private, other than unit of State or local government, the Secretary will use a grant agreement or a contract, whichever is appropriate, to implement the program and award funds. Determination as to the most appropriate of these two legal instruments shall be based, in each case, upon the following general criteria:

(1) The contract is the appropriate instrument when the Department has

a need to exercise considerable direction and control over the program.

(2) The grant is the appropriate instrument when the Department does not need to exercise considerable direction and control over the program.

(f) When the program sponsor is a unit of the Federal Government other than the Department of Labor, the Secretary will use an interagency agreement, which will be in document form, to implement the program and award Federal funds.

(g) When the program sponsor is a private, profitmaking organization, the Secretary will determine the most appropriate instrument (contract, grant, or other type of agreement) to implement the program and award Federal funds.

[41 FR 10775, Mar. 12, 1976, as amended at 42 FR 30368, June 14, 1977]

PROGRAM OPERATION

§ 97.317 General.

Program operation requirements for activities carried out under sections 301 and 304 of the Act are set forth in § 97.317 through § 97.332. The utilization of funds under this subpart is conditioned upon adherence to the Act, the regulations promulgated under the Act, and other applicable law.

§ 97.318 Basic responsibilities of program sponsors.

Each organization which enters an agreement with the Department and is awarded funds by the Department under this subpart shall be responsible for:

(a) Following and enforcing the requirements of the Act, the regulations in this subpart, and all other applicable laws;

(b) Implementing and carrying out the program in accordance with the terms and provisions of the program agreement;

(c) Conducting program activities that are, to the maximum extent feasible, consistent with each participant's fullest capabilities and which will lead to employment opportunities enabling each participant to become economically self-sufficient and which will contribute to the occupational development or upward mobility of each participant;

(d) Advising each participant of his rights and responsibilities prior to entering the program;

(e) Making every reasonable effort to achieve program goals; and

(f) Consulting appropriate labor organizations and obtaining their concurrence in the design and operation of any training program to be implemented where a collective bargaining agreement exists with a participating employer.

§ 97.319 Cooperative relationships.

(a) Each organization conducting a program under this subpart shall, to the maximum extent feasible:

(1) Establish cooperative relationships or linkages with other manpower and manpower related agencies in the area within its jurisdiction and, in particular, with agencies operating programs through the Department including but not limited to SESA's and prime sponsors under title I of the Act; and

(2) Notify the appropriate apprenticeship agency of training activities in apprenticeable occupations.

(b) Each organization conducting a program under this subpart in which recipients of Aid to Families with Dependent Children (AFDC) participate shall coordinate services with the local sponsor, if any, of the Work Incentive Program (WIN). Coordination is necessary because provision of manpower services to recipients of AFDC who have been required to register for the WIN program may be affected by the provisions of title IV of the Social Security Act and the WIN regulations in Part 56 of this title.

§ 97.320 Eligibility for participation.

(a) Except as permitted under paragraph (e) of this section, participation in programs under this subpart shall be limited to persons who are economically disadvantaged, unemployed or underemployed. However, any agreement entered by the Secretary under this subpart may specify the target group or groups to benefit from or be served by the program.

(b) Participants in public service employment programs under this subpart must meet the eligibility qualifications stated in § 96.47 of this title.

(c) Citizenship may not be used as a criterion to prevent persons from participating in a program. However, program participation shall be limited to nationals of the United States and aliens who have been accorded the privilege of residing in the United States as lawful permanent residents or are otherwise legally available for work in the United States.

(d) Program sponsors shall give special consideration to disabled veterans and veterans of the Vietnam-era who meet the eligibility requirements in paragraph (a) of this section.

(e) The provisions of paragraph (a) of this section notwithstanding, the Secretary may establish especially suitable and appropriate eligibility guidelines for persons participating in and benefitting from affirmative action efforts, job search and relocation assistance, skill improvement training, training for technological change, and upgrading training as these types of services are authorized by § 97.321(b). Where special eligibility guidelines are in effect, they shall be stated in the program agreement.

§ 97.321 Permissible activities.

(a) A program under section 301 of the Act may include any type of manpower activity which is authorized under Title I or Title II of the Act and the regulations applicable thereto as set forth in Part 95 and Part 96 of this title.

(b) A program under section 301 of the Act may, in addition to the activities authorized by paragraph (a) of this section, include the following types of activities:

(1) Affirmative action;

(2) Job search and relocation assistance;

(3) Skill improvement training;

(4) Training for technological change; and

(5) Upgrading training.

(c) Under section 304 of the Act, comprehensive work and training programs, and necessary supportive and followup services may be carried out, including the following:

(1) Programs to provide part-time employment, on-the-job training, and useful work experience for students from low-income families who are in the 9th through 12th grades of school or are equivalent in age to students in these grades and who need the earnings to resume or maintain attendance in school;

(2) Programs to provide unemployed, underemployed, or low-income persons, aged 16 and over, with useful work and training, including sufficient basic education and institutional or on-the-job training, designed to assist them to develop their maximum occupational potential and to obtain regular competitive employment;

(3) Jobs, including those in recreation and related programs for economically disadvantaged youth during the summer months;

(4) Special programs which involve work activities directed to the needs of those chronically unemployed poor who have poor employment prospects and are unable, because of age, lack of employment opportunity, or otherwise, to secure appropriate employment or training assistance under other programs, and which, in addition to other services provided, will enable such persons to participate in projects for the betterment, physical improvement, or beautification of the community or area served by the program;

(5) Special programs which provide unemployed or low-income persons with jobs leading to career opportunities, including new types of careers, in programs designed to improve the physical, social, economic, or cultural condition of the community or area served;

(6) Special services, when required, for middle-aged and older persons, including recruitment, placement, and counseling for such persons who are unemployed as a result of the closing of a plant or factory or a permanent large-scale reduction in the work force of a locality, and the provision of grants to prime sponsors to assist the prime sponsors in securing part-time or temporary employment for middle-aged and older persons; and

(7) Other manpower programs conducted by community-based organizations.

§ 97.322 Services to persons of limited English-speaking ability.

Each program sponsor conducting a program with significant participation by persons of limited English-speaking ability shall establish operating procedures to ensure:

(a) That, when teaching of skills for occupations not requiring high proficiency in English is authorized, instruction is given in the primary language of the participant;

(b) That instruction in the English language is made available to participants with limited English-speaking ability; and

(c) That the primary language of the participants is used in the delivery of other authorized services including, but not limited to:

(1) Dissemination of information;

(2) Job placement services;

(3) Counseling;

(4) Training; and

(5) Employment supervision.

§ 97.323 Services to offenders.

(a) Programs under section 301 of the Act which are intended to serve offenders shall be designed to enable participants to secure and obtain meaningful employment. Program functions or components may include, but are not limited to:

(1) Basic education;

(2) Drug addiction or dependency rehabilitation;

(3) Use of training equipment comparable to that currently used on the job for which training is provided;

(4) Making arrangements for training, job placement, or related services with:

(i) Employers;

(ii) Labor organizations; and

(iii) Parole, probationary, and judicial authorities; and

(5) Any other service which contributes to the employability of offenders.

(b) The Secretary may, however, limit the program functions or components to specific services or types of services within individual programs for offenders under this subpart.

§ 97.324 Training for lower wage industries and relocation of industries.

The regulations contained in § 95.37 of this title apply to programs under this subpart.

[41 FR 10775, Mar. 12, 1976, as amended at 42 FR 30368, June 14, 1977]

§ 97.325 Non-Federal status of participants.

Participants in programs under this subpart are not Federal employees for any purpose and are not subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employment benefits.

§ 97.326 Training allowances.

(a) *General.* (1) For each program under this subpart that includes activities in which allowances may be authorized for payment to participants, the Secretary, subject to the requirements and limitations of this section, will determine:

(i) Whether basic allowances are payable and the extent to which they shall be waived or adjusted upward;

(ii) Whether incentive allowances to public assistance recipients are payable;

(iii) Whether incentive allowances to institutionalized persons are payable and the amounts which are payable;

(iv) Whether allowances for exceptional expenses incurred by program participants are payable and the rates or schedules which will govern payments; and

(v) The delivery agent or agents authorized to operate the allowance payment system.

(2) When a program under this subpart includes activities in which allowances may be authorized for payment to participants, the Secretary's determinations with respect to these allowance payments will be stated in the program agreement. Program sponsors may pay allowances only as authorized by the program agreement.

(b) *Basic allowances.* (1) Basic allowances under this subpart may be paid only to individuals who participate in a course of training or education for which no wages are payable. Basic allowances may not, however, be paid to any individual who is receiving public assistance or whose needs or income are taken into account in determining public assistance payments to others or be paid to institutionalized persons.

(2) Basic allowances may be paid only to reimburse participants for the hours they spend (or are excused for good cause therefrom) in a course of training or education for which no wages are payable. Reimbursable hours may include those spent by participants in supportive activities, such as orientation and counseling, carried out in conjunction with the course of training or education in which the individual is enrolled.

(3) When no waiver or other adjustment is in effect, the basic allowance for one week shall be computed by applying whichever is higher of (i) the minimum hourly wage prescribed by State or local law in the jurisdiction in which the training or education is conducted or (ii) the minimum hourly wage prescribed under Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, to the number of hours which are reimbursable for that week.

(4) The basic allowance paid to a participant for one week shall be increased by $5 for each dependent over two, up to a maximum of four additional dependents. The maximum increase for dependents is $20 for six or more dependents.

(5) Any sum of money received by a participant as an unemployment compensation benefit in a week shall be subtracted from the participant's basic allowance payment for that week. For the purposes of this paragraph, unemployment compensation benefits do not include separation payments provided under a collective bargaining agreement; and the basic allowance payment to which an individual is entitled may not be diminished because of a separation payment provided under a collective bargaining agreement.

(6) The basic allowance may be adjusted upward to the degree that the local costs of living exceed the national norm.

(7) Periodic increases to the basic allowance paid to participants in a program under this subpart may be authorized to provide an additional incentive for continued participation in the course of training or education.

(8) For any program under this subpart, or any component thereof, that includes activities in which basic allowances may be authorized for payment to participants, the Secretary may waive the payment of all or part of the basic allowances. However, any such waiver:

(i) May be made only to increase the number of individuals who may be served or to otherwise promote the purposes of this subpart;

(ii) Must be applied to all participants in a program, or component thereof, who would otherwise be entitled, except as provided by paragraph (b)(8)(iii) of this section.

(iii) May apply to participants on an individual basis only when:

(A) Approved by the Department of Labor Contract/Grant Officer in writing;

(B) Agreed to freely, in writing, by the individual who is affected; and

(C) Funds allocated for basic allowances under the program agreement have been depleted;

(iv) May apply to basic allowance increments for dependents only when basic allowances have been waived in whole;

(v) May not be made solely because a participant is a veteran and receives benefits through the Vietnam Era Veteran's Readjustment Assistance Act, as amended; and

(vi) Must be made known, in writing, to all participants affected.

(c) *Incentive allowances for public assistance recipients.* (1) When an individual who is receiving public assistance or whose needs or income are taken into account in determining public assistance payments to others participates in a program under this subpart, or a component thereof, in which basic allowances have been authorized, the individual shall be paid an incentive allowance in lieu of the basic allowance. Under programs, or components thereof, where the payment of basic allowances has been waived in whole for participants who would otherwise be entitled, no incentive allowances may be paid.

(2) Incentive allowances shall be paid to entitled participants at the rate of $30 per week.

(3) Incentive allowances to entitled participants shall be reduced pro rata under part-time courses of training or education for which no wages are payable and shall be reduced pro rata for absences without good cause.

(4) Incentive allowances shall be disregarded in determining the amount of public assistance payments individuals are entitled to receive under Federal or federally assisted public assistance programs.

(d) *Incentive allowances for institutionalized persons.* (1) Incentive allowances may be paid to institutionalized persons, including prison inmates, who participate in a program under this subpart.

(2) The determination as to whether such allowances will be paid, and the amounts thereof, will be made by the Secretary in consultation with officials of the institutions. In the case of prison inmates, all or part of such payments, as determined by the Secretary and the head of the institution, may be held in reserve and delivered upon the participants' release from the institution.

(3) Incentive allowances for institutionalized persons may not be paid at a rate which exceeds the minimum wage prescribed by Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, as applied to the number of hours spent (or excused for good cause therefrom) by the participant in training, education, or related program activities carried out under this subpart.

(e) *Exceptional expenses allowances.* Allowances may be paid to participants in a program under this subpart for the exceptional expenses they incur in connection with program activities. Reasonable allowances may be provided for expenses including, but not limited to:

(1) Meal expenses;

(2) Transportation expenses; and

(3) Lodging expenses.

(f) *Time limitation.* Allowances may not be paid under any course of training or education having a duration in excess of 104 weeks.

(g) *Repayments.* Each delivery agent responsible for operating an allowance payment system under this subpart shall, to the extent possible, require participants to repay the amount of any allowance overpayments received. Any overpayment not returned may be set off against any future allowance or other benefits under the Act to which the participant may become entitled. Where the overpayment was made in the absence of fault on the part of the participant, repayment shall be waived where recovery would be against equity and good conscience or would otherwise defeat the purposes of the program.

(h) *Allowance payment systems.* Each allowance payment system established or used in conjunction with a program under this subpart shall include:

(1) A procedure to obtain information concerning receipt of unemployment compensation by participants entitled to basic allowances;

(2) A procedure to encourage each participant entitled to basic allowances to apply for unemployment compensation benefits to which the participant is also entitled if he or she is not already receiving them;

(3) Determination of entitlement and computation of amount to be paid;

(4) Issuance and distribution of payments;

(5) Maintenance of payment records and preparation of required reports;

(6) Maintenance of a system to detect and collect overpayments; and

(7) Close working arrangements with other agencies to obtain necessary information to minimize unauthorized payments, including arrangements with:

(i) The State employment security agency for verification of unemployment compensation benefits;

(ii) Local welfare agencies for verification of public assistance payments; and

(iii) Training facilities for submittal of payment requests and time and attendance certification.

§ 97.327 Wages, minimum duration of training and reasonable expectation of employment.

The regulations contained in § 95.36 of this title apply to programs under this subpart.

[41 FR 10775, Mar. 12, 1976, as amended at 42 FR 30368, June 14, 1977]

§ 97.328 General benefits and working conditions for program participants.

The regulations contained in § 98.24 of this title apply to programs under this subpart.

§ 97.329 Adverse actions.

Each program sponsor shall establish procedures for resolving any issue arising between it and a participant or an applicant for participation. Such procedures shall include an opportunity for an informal conference and a prompt determination of the issue. Such procedures shall also include a notice setting forth the grounds for any adverse action proposed to be taken against a participant and giving the participant an opportunity to respond. If an issue cannot be resolved, the participant or applicant for participation may request a review of the issue by the Contract or Grant Officer who shall act on behalf of the Secretary.

§ 97.330 Labor standards.

All laborers and mechanics employed by contractors or subcontractors in the construction, alteration or repair, including painting and decorating, of projects, buildings and works which are federally assisted under this subpart shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5).

[41 FR 10775, Mar. 12, 1976, as amended at 42 FR 30368, June 14, 1977]

§ 97.331 Nondiscrimination and equal employment opportunities.

The regulations contained in § 98.21 of this title apply to programs under this subpart.

§ 97.332 Nepotism.

The regulations contained in § 98.22 of this title apply to programs under this subpart.

§ 97.333 Special limitations on participant activities.

The regulations contained in § 98.23 of this title apply to programs under this subpart.

§ 97.334 Maintenance of effort.

Program sponsors shall use Federal funds provided under this subpart to supplement, rather than supplant, the level of funds that would otherwise be made available from non-Federal sources for the purpose of planning and administering programs and activities within the scope of this subpart.

§ 97.335 Limitations on Federal funds.

Federal funds provided under this subpart may be expended only for purposes permitted by the applicable Federal cost principles.

(a) The cost principles in Subpart 1-15.7 of Title 41 of the Code of Federal Regulations apply to program sponsors which are units of State or local government.

(b) The cost principles in Subpart 1-15.3 of Title 41 of the Code of Federal Regulations apply to program sponsors which are institutions of higher education.

(c) The cost principles in Subpart 1-15.2 of Title 41 of the Code of Federal Regulations apply to all types of program sponsor organizations not covered by paragraphs (a) and (b) of this section except when the program agreement provides that payments to the program sponsor will be made on a fixed price or fixed unit price basis.

[41 FR 10775, Mar. 12, 1976, as amended at 42 FR 30368, June 14, 1977]

§ 97.336 Subagreements.

(a) Program sponsors under this subpart may contract, subcontract, or subgrant for portions of the required program activity only if specifically authorized to do so by the program agreement.

(b) Where contracting, subcontracting, or subgranting is authorized, the regulations contained in § 98.27 of this title apply, except that no contract, subcontract, or subgrant may be entered which has a performance period extending beyond the termination date of the basic program agreement.

ADMINISTRATIVE REQUIREMENTS FOR PROGRAM GRANTS TO STATE AND LOCAL GOVERNMENTS

§ 97.341 General.

The Department's administrative requirements, standards, and procedures for grants awarded under this subpart to State and local governments are stated in § 97.341 through § 97.355. These requirements, standards, and procedures reflect those authorized and required by Federal Management Circular (FMC) 74-7; and they explicate the material contained in FMC 74-7 as it applies to State and local governments which are awarded grants under this subpart. Each State and local government which is awarded a grant under this subpart must conform to these administrative requirements, standards, and procedures. Hereinafter, State and local governments which are awarded a grant under this subpart are referred to as "grantees."

§ 97.342 Cash depositories.

(a) Any moneys advanced to a grantee are "public moneys" (owned by the Federal Government) and must be deposited in a bank with FDIC insurance coverage; and the balances exceeding FDIC coverage must be collaterally secure, as provided for in 12 U.S.C. 265.

(b) Except as provided by paragraph (a) of this section, there are no Department of Labor requirements for the physical segregation of cash depositories for grant funds which are provided to the grantee, nor are there any other requirements or eligibility standards for cash depositories in which Federal grant funds are deposited by the grantee.

(c) A separate bank account may be used when payments under letter of credit are made on a "checks-paid" basis in accordance with agreements entered into by a grantee, the Federal Government, and the banking institutions involved.

(d) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees are encouraged to use minority banks.

§ 97.343 Bonding and insurance.

Each grantee shall apply its normal bonding and insurance requirements, including fidelity bonds, to protect the interest of the Federal Government.

§ 97.344 Records maintenance.

(a) Each grantee shall retain for a period of at least three years all financial records, supporting documents, statistical records, and all other records pertinent to the program. The retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of the submission of the annual expenditure report, except that:

(1) The records shall be retained beyond the three-year period for as long as any audit findings remain unresolved;

(2) Records for nonexpendable property acquired with grant funds shall be retained for three years after its final disposition; and

(3) When grant records are transferred to or maintained by the Department, the three-year retention requirement does not apply to the grantee with respect to these records.

(b) Grantees may substitute microfilm copies in lieu of original records only with the written permission of the Grant Officer.

(c) When the Department determines that certain grant records have long-term or historical retention value, the grantee shall, upon the Department's request, deliver the records to the Department. The grantee may request an arrangement to retain the records when they are continuously needed for joint use.

(d) The Secretary of Labor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the grantee and its subgrantees and contractors which are pertinent to the grant program for the purpose of making audit, examination, excerpts and transcripts.

(e)(1) The names of all participants supported under the Act are considered public information.

(2) Other information regarding applicants, program participants, or their immediate families, which may be obtained through application forms, interviews, tests, reports from public agencies, counselors, or any other source, shall be made available to the public by the grantee to the same degree it makes such information available about its own employees in the governmental jurisdiction. Without the permission of the applicant or participant, such information which is not normally made available to the public on the grantee's own employees in the governmental jurisdiction shall be divulged only as necessary for purposes related to the performance or evaluation of the grant under this subpart to persons having responsibilities under the grant, including those furnishing services to the program under subgrant or contract, and to governmental authorities to the extent necessary for the proper administration of law.

(3) The names of all individuals employed in staff positions under the Act are considered public information. A grantee shall make other information available to the public pertaining to individuals employed in staff positions under the Act in the same manner and to the same extent as such information is made available on its regular employees. A grantee shall make other information available to the public on individuals employed in staff positions by the administrative unit of a consortium who are not also employed by a member jurisdiction in accordance with the policy of the member jurisdiction which has the least restrictive policy.

(f) Grantees shall maintain records on each program participant, including:

(1) Personal identifying information and characteristics:

(2) Residence;

(3) The work history of the participant;

(4) Program activities and supportive services in which the individual participated; and

(5) Status of the participant upon termination from the program.

§ 97.345 Single State agency not required.

No single State agency or multimember board or commission need be established or designated to administer or supervise the administration of grant programs under this subpart.

§ 97.346 Program income.

(a) In accordance with Section 203 of the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577), the Federal Government will not hold any grantee which is a State or an agency or instrumentality of a State accountable for interest earned on grant funds pending their disbursement for program purposes.

(b) Grantees which are units of local government shall return to the Federal Government all interest earned on advances of grant funds (42 *Comp.* Gen. 289).

(c) Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with the *MA Property Handbook* which implements Attachment N of FMC 74-7.

(d) Royalties received from copyrights and patents during the grant period shall be retained by the grantee and be added to the funds already committed to the program. After termination or completion of the grant, the Federal share of royalties, which is any amount in excess of $200 received annually, shall be returned to the Department.

(e) All other gross income earned by grant-supported activities during the grant period shall be retained by the grantee and shall be added to funds committed to the program and be used to further program objectives.

§ 97.347 Matching funds.

When the grantee freely contributes to the costs of the program or when the Secretary requires the grantee to share the costs of the program, the criteria and procedures for evaluating and determining the allowability of cash and in-kind contributions made by grantees are those set forth in Attachment F of FMC 74-7.

[41 FR 10775, Mar. 12, 1976; 41 FR 11819, Mar. 22, 1976]

§ 97.348 Standards for grantee financial management systems.

(a) Each grantee shall operate a financial management system which provides for:

(1) Accurate, current, and complete disclosure of the financial results of the grant program in accordance with the Federal reporting requirements;

(2) Records which identify the source and application of funds for grant-supported activities, including records containing information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income;

(3) Effective control over and accountability for all funds, property and other assets to safeguard these assets and to ensure that they are used only for authorized purposes;

(4) The comparison of actual costs with amounts budgeted for the grant;

(5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee when funds are advanced by the Federal Government;

(6) Drawdowns from the U.S. Treasury through the commercial bank as close as possible to the time of disbursements when advances are made by the letter-of-credit method;

(7) Procedures for determining the allowability and allocability of costs in accordance with the provisions of FMC 74-4; and

(8) Accounting records which are supported by source documentation.

(b) Each grantee shall audit or have audited the grant financial records to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with laws, regulations and administrative requirements. The grantee shall schedule these audits with reasonable frequency, usually annually, but not less frequently than once every two years. The grantee shall establish a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(c) Because the Department requires financial reporting on an accrual basis, the grantee shall, when its own accounting system is not kept on that basis, develop the required reporting information through analysis of documentation on hand or on the basis of best estimates.

(d) Each grantee shall require subgrantees or contractors (i.e., recipients of subgrants or contracts which are passed through by the grantee) to adopt all the standards set forth in this section, except the standard applicable to letter-of-credit drawdowns as described in paragraph (a)(6) of this section.

§ 97.349 Financial reporting requirements.

(a) Each grantee shall periodically submit a Financial Status Report which, on an accrual basis, indicates total costs incurred by cost category including indirect costs, if any. This report shall be prepared to coincide with the ending dates for Federal fiscal year quarters and shall be submitted to the Department no later than 30 days after the end of the quarterly reporting period. If the grant period ends at a date other than the last day of a Federal fiscal year quarter, a final report covering the entire grant period shall also be required. Grantees must certify to the accuracy and completeness of the costs reported.

(b) Each grantee shall periodically submit a Report of Federal Cash Transactions. Grantees which receive annual grants totalling $1 million or more shall submit this report monthly; and all other grantees shall submit it quarterly.

(c) Specific instructions and procedures for preparing and submitting the Financial Status Report and the Report of Federal Cash Transactions are contained in the *Forms Preparation Handbook.* These written procedures and instructions implement Attachment H of FMC 74-7. The Department will furnish a copy of the Handbook to each grantee.

§ 97.350 Monitoring and reporting program performance.

(a) Each grantee shall continually monitor the performance of grant supported activities to assure that program goals are being met and that the requirements of the Act and the regulations in this subpart are being met.

(b) Each grantee shall periodically submit a Program Status Summary (including any special supplement the Department may require). This report shall be prepared to coincide with the ending dates for Federal fiscal year quarters and shall be submitted to the Grant Officer no later than 30 days after the end of the quarterly reporting period. If the grant period ends at a date other than the last day of a Federal fiscal year quarter, a final report covering the entire grant period shall also be required. Specific instructions for the preparation of this report are contained in the *Forms Preparation Handbook*. Instructions for supplemental reports will be provided by the Department. The Program Status Summary provides the following types of information together with a comparison of the same items as they appear in the grant document:

(1) The total number of enrollments with granted funds during the grant period;

(2) The total number of participants placed in unsubsidized employment upon termination from the program and the number entering school, other training or military service;

(3) The level of enrollment associated with each program activity;

(4) The number of individuals within the target group or groups being served by the program; and

(5) A brief narrative account of significant program accomplishments and problem areas.

(c) Each grantee shall submit a Quarterly Summary of Participant Characteristics with the Program Status Summary. This report will include characteristics data aggregated for all participants as set forth in the report form and will include all participants terminating or placed during the reporting period. For participants who entered employment during the report period, the report will also aggregate the average wage before enrollment and upon termination from the program. Specific instructions for the preparation of this report are contained in the *Forms Preparation Handbook*.

(d) Each grantee shall, without regard to normal reporting periods, advise the Grant Officer of the following types of conditions as soon as they become known:

(1) Problems, delays, or adverse conditions which may materially affect the ability to attain program goals with an indication of what corrective action has been or will be taken and an indication of the Federal assistance, if any, which may be helpful in resolving the situation; and

(2) Favorable developments or events which will materially assist the program in meeting or exceeding its intended purposes and goals.

(e) If a performance review conducted by the grantee discloses the need for grant budget revision, the grantee shall submit a request for revision to the Grant Officer.

(f) The Department will make onsite visits as frequently as is practicable to review program accomplishments and management control systems and to provide technical assistance. Grantees shall cooperate fully with the Department in the performance of these visits.

§ 97.351 Payment procedures.

(a) Consistent with the requirements, criteria and standards stated in Attachment J of FMC 74-7, grant payments will be made through a letter of credit, an advance by Treasury check, or a reimbursement by Treasury check.

(b) Specific instructions and procedures for preparing forms associated with grant payments are contained in the *Forms Preparation Handbook*.

(c) The Department may withhold payments for proper charges if the grantee has failed to comply with program objectives, grant award conditions, or Federal reporting requirements or if the grantee is indebted to the United States and collection of the debt will not impair the accomplishment of the objectives of any grant program sponsored by the United

States. When it determines to withhold payments, the Department will inform the grantee with reasonable notice that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness of the United States is liquidated.

§ 97.352 Budget revision procedures.

(a) The grant budget is the approved financial plan for the Federal share and, if applicable, the nonfederal share to carry out the purposes of the grant as set forth in the grant agreement document. Grantees shall promptly request prior written approvals from the Grant Officer for budget revision whenever:

(1) The revision results from a net increase or decrease from the anticipated enrollment level of 15 percent or more, or from other significant changes in the scope of the grant program;

(2) The revision indicates a need for additional Federal funding;

(3) The Federal share of the grant budget is over $100,000 and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed $10,000, or 5 percent of the total grant budget, whichever is greater;

(4) The Federal share of the grant budget is $100,000 or less and the cumulative amount of transfers among direct cost object categories exceeds or is expected to exceed 5 percent of the total grant budget;

(5) The revision involves the transfer of amounts budgeted for indirect costs to absorb increases in direct costs;

(6) The revision pertains to the addition of cost items requiring approval in accordance with the provisions of FMC 74-4; or

(7) The grantee plans to transfer Federal funds allotted for training allowances or other direct payments to participants to other categories of expense.

(b) Before deviating from the grant budget in any manner described in paragraph (a) of this section, the grantee must obtain the prior written approval of the Grant Officer. All other deviations from the grant budget may be undertaken by the grantee without the approval of the Grant Officer. These deviations include the use of additional grantee funds to further the purposes of the program and the transfer of amounts budgeted for direct costs to absorb authorized increases in indirect costs.

(c) Each grantee shall promptly notify the Grant Officer when the amount of Federal funds authorized is expected to exceed actual needs by more than $5,000 or 5 percent of the Federal grant, whichever is greater.

(d) When requesting approval for budget revisions grantees must use the budget forms which are used in the grant agreement document. However, grantees may request by letter the cost item approvals required by FMC 74-4.

(e) Under normal circumstances, the Department will notify the grantee of budget revision approvals or disapprovals within 30 days of receipt of the request. If the revision request is still under consideration at the end of 30 days, the Department will inform the grantee in writing as to when the Department's decision will be forthcoming.

§ 97.353 Grant closeout procedures.

(a) Subsequent to the completion date of the grant, i.e., the date stated in the grant agreement document or any amendment thereto upon which Federal assistance under the grant ends, the grant must be closed out. Grant closeout is the process by which the Department determines that all required administrative actions and all required grant work have been completed by the grantee and the Department. The Department will provide each grantee with the necessary forms (with instructions) associated with the closeout of the grant. The basic procedures for closeout are described in this paragraph.

(1) If grant payments are made on a letter of credit, the Department will notify the grantee that the letter of credit is to be cancelled and that, following cancellation, any further payments under the grant will be made by Treasury check upon submission and approval of the required payment requests.

(2) Upon receipt and approval of the necessary requests, the Department will make prompt payment to the grantee for allowable reimbursable costs under the grant being closed out.

(3) Upon the Department's request the grantee shall immediately refund any unencumbered balance of cash drawn down from the letter of credit or advanced by Treasury check. Items to be included with the refund check are detailed in the *Forms Preparation Handbook*.

(4) Within 90 days after the completion date, the grantee shall submit the following financial and inventory reports which are described in the *Forms Preparation Handbook:*

(i) A final Financial Status Report;

(ii) A final Report of Federal Cash Transactions;

(iii) The Grantee's Assignment of Refunds, Rebates, and Credits;

(iv) Bank Statement—Special Bank/Financial Account;

(v) Cancellation/Adjustment of Fidelity Bond;

(vi) A list of possible claimants for unclaimed checks cancelled or payment stopped;

(vii) Grant Closeout Tax Certification;

(viii) Government Property Inventory; and

(ix) Inventory Certificate.

(5) Within 90 days after the completion date, the grantee shall submit the Grantee's Release form as described in the *Forms Preparation Handbook*.

(6) Within 30 days after the completion date, the grantee shall submit a final Program Status Summary (with supplement if appropriate) and Quarterly Summary of Participant Characteristics.

(7) After receipt of the documents and final reports described in paragraphs (a)(4) through (a)(6) of this section, the Department will make settlement for any upward or downward adjustment to the Federal share of costs.

(8) In the event a final audit has not been performed prior to closeout of the grant, the Department retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

(b) Suspension of a grant is an action by the Secretary which temporarily suspends Federal assistance under the grant pending corrective action by the grantee or pending a decision by the Secretary to terminate the grant. In the event that the Secretary determines that a grantee has failed to comply with stipulations, standards, or conditions of the grant agreement, the Secretary may, on reasonable notice to the grantee, suspend the grant, and withhold further payments, or prohibit the grantee from incurring additional obligations of grant funds, pending corrective action by the grantee or a decision to terminate in accordance with paragraph (c)(1) of this section. The Secretary may allow all necessary and proper costs which the grantee could not reasonably avoid during the period of suspension provided that they meet the provisions of FMC 74-4.

(c) The termination of a grant is the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to the completion date.

(1) The Secretary may terminate any grant in whole, or in part, at any time before the date of completion, whenever, it is determined that the grantee has failed to comply with the conditions of the grant. The Secretary will promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date. Payments made to grantees or recoveries by the Department under grants terminated for cause shall be in accord with the legal rights and liabilities of the parties.

(2) A grant may be terminated in whole or in part when both the grantee and the Secretary agree that the continuation of the program would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Secretary will allow full credit to the

grantee for the Federal share of the noncancellable obligations, properly incurred by the grantee prior to termination.

§ 97.354 Property management standards.

Standards for the management, control, and disposition of grant-acquired property are contained in the *MA Property Handbook*. Grantees must adhere to the standards set forth in the handbook. A copy of the handbook, which implements Attachment N of FMC 74-7, will be furnished by the Department to each grantee.

§ 97.355 Procurement standards.

The standards to be used by grantees for the procurement of supplies, equipment, and other services with Federal grant funds are those stated in Attachment O of FMC 74-7..

ADMINISTRATIVE STANDARDS FOR PROGRAM AGREEMENTS WITH PUBLIC AND PRIVATE INSTITUTIONS OF HIGHER EDUCATION, PUBLIC AND PRIVATE HOSPITALS, AND OTHER PUBLIC AND PRIVATE NONPROFIT ORGANIZATIONS

§ 97.361 General.

The Department's administrative requirements, standards, and procedures for program agreements awarded under this subpart to public and private institutions of higher education, public and private hospitals, and other public and private nonprofit organizations, including Indian Tribes are stated in § 97.361 through § 97.375. These requirements, standards, and procedures reflect those described by the General Services Administration in their notice of proposed rulemaking for 34 CFR Part 258 which was published Monday, February 10, 1975, in the FEDERAL REGISTER (40 FR 6304-6312). The requirements, standards, and procedures stated in § 97.361 through § 97.375 will be amended as any subsequent effective regulations in 34 CFR Part 258 might indicate. Each public or private institution of higher education, public or private hospital, or other public or private nonprofit organization, including any Indian Tribe, which is awarded a program agreement under the Act must conform to these requirements, standards and procedures. Hereinafter, these types of organizations will be referred to as "recipients."

§ 97.362 Cash depositories.

(a) A separate bank account shall be used when letter-of-credit agreements entered into by the recipient, the Federal Government and the bank involved provide that drawdowns will be made when the recipient's checks are presented to the bank for payment.

(b) Any Federal funds which are advanced to a recipient are subject to the control and regulation of the United States and its officers, agents or employees (public moneys as defined in Treasury Circular No. 1976). Funds advanced must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage; and the balance exceeding FDIC coverage must be collaterally secured. In order to ensure that security is obtained, a special bank account with a lien in favor of the Federal Government is required when funds are advanced to a recipient.

(c) Except as provided by paragraphs (a) and (b) of this section, there are no Department of Labor requirements for the physical segregation of cash depositories for Federal program funds which are provided to the recipient, nor are there any other requirements or eligibility standards for cash depositories in which Federal program funds are deposited by the recipient.

(d) Consistent with the national goal of expanding opportunities for minority business enterprises, recipients are encouraged to use minority banks (a bank at least 50 percent owned by minority group members).

§ 97.363 Bonding and insurance.

(a) When advance payments are made to the recipient, the recipient shall obtain fidelity bond coverage which meets the specifications described in paragraphs (a)(1) through (a)(6) of this section.

(1) Fidelity bond coverage shall be in the form of a blanket position bond with an approved corporate surety covering any and all officers and employees of the recipient organization

who are involved in the activities of the program.

(2) The amount of the bond shall be $25,000 or the amount of the advance payment, whichever is less.

(3) If possible, both the recipient and the Secretary of Labor shall be named as the insureds. If this is not possible, the recipient shall be named as the insured.

(4) The period of coverage shall be at least one year, with a discovery period of no less than one year after the cancellation or other termination of the bond.

(5) The bond shall stipulate that the Department of Labor Contract/Grant Officer be given 35 days advance notice by the surety prior to making any material change in, or cancellation of, the bond. The advance notice shall be provided by certified mail.

(6) If the bond covers advance payments under funding agreements with more than one agency, the bond shall contain a recovery provision for each Federal agency involved.

(b) Recipients shall obtain and maintain in force during the lifetime of the program agreement "third person" liability insurance of the types and in the amounts described in this paragraph.

(1) The recipient shall obtain and maintain Worker's Compensation insurance for his staff in the amounts required by State law.

(2) The recipient shall obtain and maintain Occupational Diseases Insurance as required by applicable law. In an area where all occupational diseases are not compensable under applicable law, insurance for occupational diseases shall be secured under the employer liability section of the recipient's insurance policy. Minimum coverage per incident is $100,000.

(3) The recipient shall obtain and maintain Employer Liability insurance to cover any liability imposed upon the recipient, by law, for damages on account of personal injuries, including death resulting therefrom, sustained by the recipient's employees by reason of accident. Minimum coverage per incident is $100,000.

(4) The recipient shall obtain and maintain General Liability Insurance (Bodily Injury) to provide coverage against claims arising from bodily injury or death to third parties occurring on the recipient's business premises or through the recipient's operations, except those arising from motor vehicles away from the premises, those covered by Worker's Compensation Law, and other exclusions stated in the policy. The minimum coverage for bodily injury is $100,000 per person and $300,000 per accident.

(5) The recipient shall obtain and maintain Automobile Liability insurance. The required coverage is $100,000 per person and $300,000 per accident for bodily injury and $25,000 per accident for property damage. The types and amounts stated for vehicle insurance must apply to any vehicle operated or used in connection with project activities. In the event a privately-owned vehicle is used, the Federal Government's share of insurance premiums, including any additional coverage required to conform with the requirements of this paragraph, shall be prorated in accordance with the vehicle's actual use while conducting activities under the program.

§ 97.364 Records maintenance.

(a) Each recipient shall retain for a period of at least three years all financial records, supporting documents, statistical records, and all other records pertinent to the program. For types of program agreements other than contracts the retention period starts from the date of the submission of the final expenditure report or, for agreements which are renewed annually, from the date of the submission of the annual expenditure report. For contracts, the retention period starts from the date of final payment. For all types of program agreements, however:

(1) The records shall be retained beyond the three-year period for as long as any audit findings remain unresolved;

(2) Records for nonexpendable property acquired with Federal program funds shall be retained for three years after its final disposition; and

(3) When program records are transferred to or maintained by the Department, the three-year retention re-

quirement does not apply to the recipient with respect to these records.

(b) Recipients may substitute microfilm copies in lieu of original records only with the written permission of the Contract/Grant Officer.

(c) When the Department determines that certain project records have long-term or historical retention value, the recipient shall, upon the Department's request, deliver the records to the Department. However, the recipient may request an arrangement to retain the records when they are continuously needed for joint use.

(d) The Secretary of Labor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the recipient and its subgrantees, contractors, and subcontractors which are pertinent to the program for the purpose of making audit, examination, excerpts and transcripts.

(e)(1) The names of all participants supported under the Act are considered public information.

(2) Other information regarding applicants, program participants, or their immediate families, which may be obtained through application forms, interviews, tests, reports from public agencies, counselors, or any other source, shall be made available to the public by the recipient to the same degree it makes such information available about its own employees. Without the permission of the applicant or participant, such information which is not normally made available to the public on the recipient's own employees shall be divulged only as necessary for purposes related to the performance or evaluation of the program agreement to persons having responsibilities under the agreement, including those furnishing services to the program under subgrant, contract, or subcontract, and to governmental authorities to the extent necessary for the proper administration of law.

(3) The names of all individuals employed in staff positions under the Act are considered public information. A recipient shall make other information available to the public pertaining to individuals employed in staff positions under the Act in the same manner and to the same extent as such information is made available on its regular employees.

(f) Recipients shall maintain records on each program participant, including:

(1) Personal identifying information and characteristics;

(2) Residence;

(3) The work history of the participant;

(4) Program activities and supportive services in which the individual participated; and

(5) Status of the participant upon termination from the program.

§ 97.365 Program income.

(a) In accordance with Section 203 of the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577), the Federal Government will not hold any recipient which is an instrumentality of a State accountable for interest earned on Federal program funds pending their disbursement for program purposes.

(b) Recipients which are not instrumentalities of a State shall remit to the Federal Government all interest earned on advances of Federal program funds.

(c) Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with the *Property Handbook for MA Contractors.*

(d) Royalties received as a result of copyrights or patents will be retained by the recipient unless the terms of the program agreement provide otherwise.

(e) All other gross income earned by program activities during the program agreement period shall be retained by the recipient and shall be added to funds committed to the program and be used to further program objectives.

§ 97.366 Matching share.

(a) Definitions of terms for the purposes of this section are provided in this paragraph.

(1) "Program costs" means all allowable costs incurred by a recipient (as set forth in the applicable Federal cost

principles) and the value of in-kind contributions made by third parties in accomplishing the objectives of the program agreement during the program period.

(2) "Matching share" means that portion of the program costs not borne by the Federal Government.

(3) "Cash contributions" means the recipient's cash outlay, including the outlay of money contributed to the recipient by non-Federal parties.

(4) "In-kind contributions" means the value of noncash contributions provided by the recipient and nonfederal third parties. Property purchased with Federal funds may not be considered as any part of the recipient's in-kind contribution. In-kind contributions may be in the form of real property and nonexpendable personal property, and the value of goods and services directly benefiting the program.

(b) When the recipient freely contributes to the costs of the program or when the Secretary requires the recipient to share the costs of the program, the matching share may consist of items described in this paragraph.

(1) The matching share may include charges incurred by the recipient as program costs. It is acknowledged that not all charges require cash outlays by the recipient during the program period, such as depreciation and use charges for buildings and equipment.

(2) The matching share may include program costs financed with cash contributed or donated to the recipient by public agencies and institutions, and private organizations and individuals.

(3) The matching share may include program costs represented by services and real and personal property, or use thereof, donated by public agencies and institutions, and private organizations and individuals.

(c) All contributions, both cash and in-kind, will be accepted as part of the recipient's matching share when the contributions meet all the following criteria:

(1) Are verifiable from the recipient's records;

(2) Are not included as contributions to any other federally assisted program;

(3) Are necessary and reasonable for proper and efficient accomplishment of program objectives;

(4) Are types of charges which would be allowable under the applicable cost principles;

(5) Are not paid by the Federal Government directly or indirectly under another agreement; and

(6) Conform to the other requirements and standards stated in this section.

(d) Values for recipient in-kind contributions will be established in accordance with the applicable cost principles.

(e) Specific procedures for recipients in establishing the value of in-kind contributions from non-Federal third parties are described in this paragraph.

(1) Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteer service may be counted toward the matching share if the service is an integral and necessary part of the approved program. Rates for volunteers must be consistent with those paid for similar work in the recipient's organization. In instances when the required skills are not found in the recipient's organization, rates must be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. When an employer other than the recipient furnishes the services of an employee, these services must be valued at the employee's regular rate of pay (excluding fringe benefits and overhead costs) provided that these services are in the same skill for which the employee is normally paid.

(2) Donated expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Values assessed to expendable personal property included in the matching share must be reasonable and must not exceed the market value of the property at the time of the donation.

(3)(i) Depreciation or use charges may be made for the contributed use of equipment, buildings, or land which directly supports project activities.

The full value of equipment or other capital assets and fair rental charges for land may be included only if permitted and approved by the Department in writing.

(ii) The value of donated property will be determined in accordance with the usual accounting policies of the recipient with the following qualifications:

(A) The value of donated land and buildings may not exceed its fair market value at the time of donation as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration (GSA) representative);

(B) The value of donated nonexpendable personal property may not exceed the fair market value of equipment and property of the same age and condition at the time of donation;

(C) The value of donated space may not exceed the fair rental value of comparable space as established by an independent appraiser of comparable space and facilities in a privately owned building in the same locality; and

(D) The value of loaned equipment may not exceed its fair rental value.

(f) Volunteer services contributed from non-Federal third parties must, to the extent feasible, be supported by the same methods used by the recipient for its employees. Also, the basis used for determining the value of personal services, material, equipment and land contributed from non-Federal third parties must be documented.

§ 97.367 Standards for recipient financial management systems.

(a) Each recipient shall operate a financial management system which provides for:

(1) Accurate, current, and complete disclosure of the financial results of the program in accordance with the Federal reporting requirements;

(2) Records which identify the source and application of funds for federally supported program activities, including records containing information pertaining to Federal program awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income;

(3) Effective control over and accountability for all funds, property and other assets to safeguard these assets and to ensure that they are used only for authorized purposes;

(4) The comparison of actual costs with amounts budgeted for the program;

(5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the recipient when funds are advanced by the Federal Government;

(6) Drawdowns from the U.S. Treasury through the commercial bank as close as possible to the time of disbursements when advances are made by the letter-of-credit method;

(7) Procedures for determining the allowability and allocability of costs in accordance with the applicable Federal cost principles and the terms of the agreement; and

(8) Accounting records which are supported by source documentation.

(b) Each recipient shall conduct or arrange for examinations in the form of audits or internal audits of its financial transactions. These examinations may be performed only by individuals who are sufficiently independent of those who authorize the expenditure of Federal funds to produce unbiased opinions, conclusions or judgments. These examinations shall be made to ascertain the effectiveness of the financial management system and internal procedures that have been established to meet the terms and conditions of the program agreement. Examinations should be conducted on an organizationwide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the project agreement. The tests must include an appropriate sampling from the program agreement. Examinations must be conducted with reasonable frequency, but not less frequently than once every two years. The recipient shall establish a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(c) Because the Department requires financial reporting on an accrual basis, the recipient shall, when its own accounting system is not kept on that basis, develop the required reporting information through analysis of documentation on hand or on the basis of best estimates.

(d) Recipients shall require their subgrantees, contractors, and subcontractors to adopt the standards stated in this section, except those for letter-of-credit drawdowns as described in paragraph (a)(6) of this section.

§ 97.368 Financial reporting requirements.

(a) Each recipient shall periodically submit a Financial Status Report which, on an accrual basis, indicates total costs incurred by cost category including indirect costs, if any. This report shall be prepared to coincide with the ending dates for Federal fiscal year quarters and shall be submitted to the Department no later than 30 days after the end of the quarterly reporting period. If the program period ends at a date other than the last day of a Federal fiscal year quarter, a final report covering the entire program period shall also be required. Recipients must certify to the accuracy and completeness of the costs reported.

(b) Each recipient shall periodically submit a Report of Federal Cash Transactions. Recipients which receive advances totalling $1 million or more per year shall submit this report monthly; and all other recipients shall submit it quarterly.

(c) Specific instructions and procedures for preparing and submitting the Financial Status Report and the Report of Federal Cash Transactions are contained in the *Forms Preparation Handbook*. The Department will furnish a copy of the handbook to each recipient.

§ 97.369 Monitoring and reporting program performance.

(a) Each recipient shall continually monitor the performance of program activities to assure that program goals are being met and that the requirements of the Act and the regulations in this subpart are being met.

(b) Each recipient shall periodically submit a Program Status Summary (including any special supplement the Department may require). This report shall be prepared to coincide with the ending dates for Federal fiscal year quarters and shall be submitted to the Contract/Grant Officer no later than 30 days after the end of the quarterly reporting period. If the program period ends at a date other than the last day of a Federal fiscal year quarter, a final report covering the entire program period shall also be required. Specific instructions for the preparation of this report are contained in the *Forms Preparation Handbook*. Instructions for supplemental reports will be provided by the Department. The Program Status Summary provides the following types of information together with a comparison of the same items as they appear in the grant document:

(1) The total number of enrollments with program funds during the program period;

(2) The total number of participants placed in unsubsidized employment upon termination from the program and the number entering school, other training or military service;

(3) The level of enrollment associated with each program activity;

(4) The number of individuals within the target group or groups being served by the program; and

(5) A brief narrative account of significant program accomplishments and problem areas.

(c) Each recipient shall submit a Quarterly Summary of Participant Characteristics with the Program Status Summary. This report will include characteristics data aggregated for all participants as set forth in the report form and will include all participants terminating or placed during the reporting period. For participants who entered employment during the report period, the report will also aggregate the average wage before enrollment and upon termination from the program. Specific instructions for the preparation of this report are contained in the *Forms Preparation Handbook*.

(d) Each recipient shall, without regard to normal reporting periods, advise the Contract/Grant Officer of the following types of conditions as soon as they become known:

(1) Problems, delays, or adverse conditions which may materially affect

the ability to attain program goals with an indication of what corrective action has been or will be taken and an indication of the Federal assistance, if any, which may be helpful in resolving the situation; and

(2) Favorable developments or events which will materially assist the program in meeting or exceeding its intended purposes and goals.

(e) If a performance review conducted by the grantee discloses the need for program budget revision, the recipient shall submit a request for revision to the Contract/Grant Officer.

(f) The Department will make onsite visits as frequently as is practicable to review program accomplishments and management control systems and to provide technical assistance. Recipients shall cooperate fully with the Department in the performance of these visits.

§ 97.370 Payment procedures.

(a) Consistent with all applicable Federal requirements, payments to recipients will be made through letter-of-credit, advance by Treasury check, or reimbursement by Treasury check. The Department will provide specific instructions and procedures to each recipient.

(b) The Department may withhold payments for proper charges if the recipient has failed to comply with program objectives, award conditions, or Federal reporting requirements or if the recipient is indebted to the United States and the collection of the debt will not impair the accomplishment of the objectives of any project or program sponsored by the United States. When it determines to withhold payments, the Department will inform the recipient with reasonable notice that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the United States is liquidated.

§ 97.371 Budget revision procedures.

(a) The program budget is the approved financial plan for the Federal share and, if applicable, the non-Federal shares as set forth in the program agreement document. Recipients shall promptly request the prior written approval of the Contract/Grant Officer for budget revision whenever:

(1) The revision results from a net increase or decrease from the anticipated enrollment level of 15 percent or more, or from other significant changes in the scope of the program;

(2) The revision indicates a need for additional Federal funding;

(3) The Federal share of the budget is over $100,000 and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed 5 percent of the total budget;

(4) The revision involves the transfer of amounts budgeted for indirect costs to absorb increases in direct costs or vice versa;

(5) The revision pertains to expenditures which require approval in accordance with FMC 73-8 (34 CFR Part 254) (Cost Principles for Educational Institutions); or

(6) The recipient plans to transfer Federal funds allotted for training allowances or other direct payments to participants to other categories of expense.

(b) Before deviating from the budget in any manner described in paragraph (a) of this section, the recipient must obtain the prior written approval of the Contract/Grant Officer. All other deviations from the budget may be undertaken by the recipient without the approval of the Contract/Grant Officer. These deviations include the use of additional recipient funds to further the purposes of the program.

(c) Each recipient shall promptly notify the Contract/Grant Officer when the amount of Federal funds authorized is expected to exceed actual needs by more than $5,000 or 5 percent of the Federal award, whichever is greater.

(d) When requesting approval for budget revisions, recipients must use the budget forms which are used in the program agreement document.

(e) Under normal circumstances, the Department will notify the recipient of budget revision approvals or disapprovals within 30 days of receipt of the request. If the revision request is still under consideration at the end of 30 days, the Department will inform the recipient in writing as to when the

Department's decision will be forthcoming.

§ 97.372 Closeout procedures.

Subsequent to the completion date of the agreement. i.e., the date stated in the agreement document or any amendment thereto upon which Federal assistance under the agreement ends, the agreement must be closed out. Closeout is the process by which the Department determines that all required administrative actions and all required program work have been completed by the receipient and the Department. The Department will provide each recipient with the necessary forms (with instructions) associated with the closeout of the agreement. The basic procedures for closeout are described in this section.

(a) If payments are made on a letter of credit, the Department will notify the recipient that the letter of credit is to be cancelled and that, following cancellation, any further payments under the agreement will be made by Treasury check upon submission and approval of the required payment requests.

(b) Upon receipt and approval of the necessary requests, the Department will make prompt payment to the recipient for allowable reimbursable costs under the agreement being closed out.

(c) Upon the Department's request, the recipient shall immediately refund any unencumbered balance of cash drawn down from the letter of credit or advanced by Treasury check. Items to be included with the refund check are detailed in the *Forms Preparation Handbook.*

(d) Within 90 days after the completion date, the recipient shall submit the following financial and inventory reports:

(1) A final Financial Status Report;

(2) A final Report of Federal Cash Transactions;

(3) The Assignment of Refunds, Rebates, and Credits;

(4) Bank Statement-Special Bank/Financial Account;

(5) Cancellation/Adjustment of Fidelity Bond;

(6) A list of possible claimants for unclaimed checks cancelled or payment stopped;

(7) Closeout Tax Certification;

(8) Government Property Inventory; and

(9) Inventory Certificate.

(e) Within 90 days after the completion date, the recipient shall submit the required Release form.

(f) Within 30 days after the completion date, the recipient shall submit a final Program Status Summary (with supplement if appropriate) and Quarterly Summary of Participant Characteristics.

(g) After receipt of the documents and final reports described in paragraphs (a) through (f) of this section, the Department will make settlement for any upward or downward adjustment to the Federal share of costs.

(h) In the event a final audit has not been performed prior to closeout of the agreement, the Department retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 97.373 Suspension and termination procedures.

(a) Suspension of an agreement is an action by the Secretary which temporarily suspends Federal assistance under the agreement pending corrective action by the recipient or pending a decision by the Secretary to terminate the agreement. In the event that the Secretary determines that a recipient has failed to comply with stipulations, standards, or conditions of the agreement, the Secretary may, on reasonable notice to the recipient, suspend the agreement, and withhold further payments, or prohibit the recipient from incurring additional obligations of Federal funds, pending corrective action by the recipient or a decision to terminate in accordance with paragraph (b)(1) of this section. The Secretary may allow all necessary and proper costs which the recipient could not reasonably avoid during the period of suspension provided that they meet the provisions of the applicable cost principles.

(b) The termination of an agreement is the cancellation of Federal assistance, in whole or in part, under an agreement at any time prior to the completion date.

(1) The Secretary may terminate any agreement in whole or in part, at any time before the date of completion, whenever it is determined that the recipient has failed to comply with the conditions of the agreement. The Secretary will promptly notify the recipient in writing for the determination and the reasons for the termination, together with the effective date. Payments made to recipients or recoveries by the Department under agreements terminated for cause shall be in accord with the legal rights and liabilities of the parties.

(2) An agreement may be terminated in whole or in part when both the recipient and the Secretary agree that the continuation of the program would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Secretary will allow full credit to the recipient for the Federal share of the noncancellable obligations, properly incurred by the recipient prior to termination.

(3) If the agreement is in the form of a contract, the Contracting Officer may cancel the agreement (i.e., contract) in whole or in part whenever the Contracting Officer determines that termination would be in the best interest of the Government.

§ 97.374 Property management standards.

Standards for the management, control, and disposition of property acquired under the agreement are contained in the *Property Handbook for MA Contractors.* Recipients shall adhere to the standards set forth in the handbook. A copy of the handbook will be furnished by the Department to each recipient.

§ 97.375 Procurement standards.

(a) Recipients shall procure supplies, equipment and other services with Federal program funds in an effective manner and in compliance with the provisions of applicable Federal law and executive orders. Recipients shall rely on the private sector to provide goods and services to the extent feasible. The term "procurement" refers to the acquisition of supplies, equipment and other services from outside sources which are to be used by the recipient in carrying out its organizational mission and responsibilities under the program.

(b) The recipient shall maintain a code or standard of conduct which shall govern the performance of its officers, employees and agents in the award and administration of procurement contracts using Federal program funds. The recipient's officers, employees and agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from actual or potential contractors. The recipient's code or standard of conduct shall provide for disciplinary actions against persons who violate the code or standard.

(c) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors which may eliminate competition or otherwise restrain trade. Procurement awards shall be made to the bidder/offeror with the lowest bid/offer, provided the bidder/offeror is responsible and its bid/offer is responsive to the solicitation and is most advantageous to the recipient, price and other factors considered. Solicitations for procurements must describe clearly the requirements which the bidder/offeror must meet in order for the bid/offer to be evaluated by the recipient. Any and all bids/offers may be rejected when it is in the recipient's interest to do so.

(d) Recipients shall establish procurement procedures which, as a minimum, are based on the requirements described in paragraph (d)(8) of this section.

(1) Proposed procurement actions shall include a procedure to assure the avoidance of purchasing unnecessary or duplicative items. When appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(2) Solicitations for supplies and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the name brand which must be met by bidders/offerors shall be clearly specified.

(3) Positive efforts must be made by recipients to utilize small businesses and minority-owned businesses as sources of supplies and services. These efforts should focus on allowing these types of sources the maximum feasible opportunity to compete for procurement awards under the program agreement.

(4) The type of procuring instruments used, e.g., fixed price contracts, cost reimbursement contracts, purchase orders, and incentive contracts, shall be determined by the recipient to be appropriate for the particular procurement and for promoting the best interests of the program. The "cost plus a percentage of cost" method of contracting may not be used.

(5) Procurement contracts may be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.

(6) No proposed sole source procurement contracts in which the aggregate expenditure is expected to exceed $5,000 may be awarded without prior written approval from the Contract/Grant Officer.

(7) Procurement records and files for purchases in excess of $10,000 shall include:

(i) Basis for contractor selection;

(ii) Justification for lack of competition when competitive bids or offers are not obtained and the written authority of the Contract/Grant Officer for the noncompetitive procurement as is required by paragraph (d)(7) of this section; and

(iii) Basis for award cost or price.

(8) A system for procurement contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract and to ensure adequate and timely followup of all purchases.

(e) In addition to provisions which provide for a sound and complete agreement, the recipient shall include in procurement agreements the provisions described and required by paragraphs (e)(1) through (e)(5) of this section. These provisions shall also be applied to subcontracts.

(1) Contracts in excess of $10,000 shall contain provisions or conditions that will allow for administrative, contractual, or legal remedies in instances in which contractors violate or breach contract terms and provide for such remedial actions as may be appropriate.

(2) All contracts in excess of $10,000 must contain suitable provisions for termination by the recipient including the manner by which termination will be effected and the basis for settlement. In addition, these contract provisions must describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) Contracts or agreements, the principal purpose of which is to create, develop, or improve products processes, or methods; or for exploration into fields which directly concern public welfare, shall contain a notice to the effect that matters regarding rights to inventions and materials generated under the contract or agreement are

subject to the Department's regulations and recipient's regulations. The contractor must be advised as to the source of additional information regarding these matters.

(4) All negotiated procurement contracts in excess of $2,500 shall include a provision to the effect that the recipient, the Department, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to the activities of the program.

(5) Procurement agreements and subproject agreements in excess of $100,000 shall contain a provision which requires the awardee to agree to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act of 1970. Violations must be reported to the Department and the Regional Office of the Environmental Protection Agency.

(f) The standards contained in this section in no way relieve the recipient of contractual responsibilities arising under its contracts or subagreements. The recipient is the responsible authority, without recourse to the Department, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of the program agreement. This includes disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the appropriate local, State, or Federal authority.

ADMINISTRATIVE STANDARDS FOR PROGRAM AGREEMENTS WITH PRIVATE, PROFITMAKING ORGANIZATIONS

§ 97.381 Administration.

Administrative standards and requirements for private profitmaking organizations that are awarded program agreements under this subpart will be included in the terms and provisions of the program agreements.

[42 FR 30368, June 14, 1977]

INTERAGENCY AGREEMENTS

§ 97.386 Administration.

(a) The Secretary will require other Federal establishments which receive and utilize funds under this subpart to submit financial reports and standard program progress reports. However, the Secretary will not require these reports to be submitted more frequently than quarterly.

(b) The Secretary will require other Federal establishments which receive and utilize funds under this subpart to maintain the standard records on individual participants and participant activities.

(c) In all aspects of program administration other than those described in paragraphs (a) and (b) of this section, Federal establishments which receive and utilize funds under this subpart may use their normal administrative procedures.

ASSESSMENT AND EVALUATION

§ 97.391 General.

Procedures which will be observed by the Department in assessing and evaluating the results and effectiveness of programs under this subpart are described in § 97.391 through § 97.393. The Department will assess program sponsors to determine whether they are carrying out the purposes and provisions of the Act in accordance with their program agreements. The Secretary will also evaluate the overall effort under this subpart to aid in the overall administration of the Act.

§ 97.392 Responsibilities of the Secretary.

(a) As used in this section, the term "assessment" means the Federal review of the performance of individual program sponsors; and the term "evaluation" means the Federal study of the overall results and general effectiveness of activities under this subpart.

(b) The Secretary has the responsibility to determine whether program sponsors are operating in accord with their respective program agreements in carrying out the purposes and provisions of the Act and are demonstrating maximum efforts to achieve the stated goals and objectives of their programs.

(c) (1) Assessment will be conducted through the review of required periodic reports and, as necessary, will be supplemented with special reports from program sponsors, the examination of records maintained by program sponsors, selective on-site reviews, including the investigation of allegations or complaints, or other examination as may be deemed necessary and appropriate by the Secretary.

(2) Assessment may also be conducted for purposes of offering technical assistance and recommendations for corrective actions to program sponsors as considered necessary.

(d) The Secretary has the responsibility to provide for the continuing evaluation of all activities conducted under the Act. These studies will include examination of:

(1) Cost in relation to effectiveness;

(2) Impact on communities and participants;

(3) Implications for related programs;

(4) The effectiveness with which the needs of the target groups are being met;

(5) Adequacy of mechanisms for administration;

(6) Opinions of participants about the strengths and weaknesses of programs; and

(7) The extent to which artificial barriers restricting employment and advancement opportunities in organizations receiving funds under this subpart have been removed.

(e) The Secretary will compile, on a State, regional, and national basis, information obtained from periodic reports or special reports, surveys or samples required from program sponsors, including information related to:

(1) Participant characteristics;

(2) Duration in training and employment situations; and

(3) Costs.

(f) Evaluations carried out in accordance with paragraph (d) of this section may be conducted directly by the Department or through contract, grant or other arrangements.

§ 97.393 Limitation.

The Secretary may not, in arranging for the evaluation of projects under this subpart, utilize for such evaluation any non-governmental individual, institution or organization which is associated with any program as a consultant, technical advisor or in any similar capacity.

CONSULTATION WITH THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE

§ 97.396 General.

The Secretary will consult with the Secretary of Health, Education, and Welfare with respect to arrangements for services of a health, education, or welfare character in programs under this subpart. This consultation will focus on the relationship of such services under this subpart with those being delivered under laws administered by the Secretary of Health, Education, and Welfare.

§ 97.397 Youth programs.

Prior to awarding funds directly to any local or State education agency to implement a youth program as authorized by section 304(a)(1) of the Act, the Secretary will consult with the Secretary of Health, Education, and Welfare to obtain his comments and guidance on the planned program.

Subpart E—[Reserved]

Subpart F—Youth Incentive Entitlement Pilot Projects

AUTHORITY: Sec. 702(a) of the Comprehensive Employment and Training Act of 1973, as amended, unless otherwise noted.

SOURCE: 43 FR 23504, May 30, 1978, unless otherwise noted.

§ 97.500 Scope and purpose of subpart.

(a) This subpart contains the regulations governing the Youth Incentive Entitlement Pilot Projects (Entitlement Projects) under Title III, Part C, Subpart I of the Comprehensive Employment and Training Act. The Youth Incentive Entitlement Pilot Projects were established by Title II of the Youth Employment and Demonstration Projects Act (YEDPA) of 1977.

(b) The basic purpose of the Entitlement Projects is to test the experimental idea of guaranteeing jobs, or in some cases a combination of jobs and training, to economically disadvantaged youth. The program will operate only in certain prime sponsor areas, or portions of prime sponsor areas, chosen by the Department of Labor. Within those areas during the school-year, otherwise unavailable part-time employment, or a combination of part-time employment and training, will be guarantee to those economically disadvantaged youth, between the ages of 16 to 19 inclusive, who are in secondary school or who are in a program leading to a certificate of high school equivalency. In addition, in those same areas during the summer, otherwise unavailable full-time employment, or a combination of part-time employment and training, will be guaranteed to economically disadvantaged youth, between the ages of 16 to 19 inclusive, who are in a secondary school or who are in a program leading to a certificate of high school equivalency. (Sec. 325(a)).

(c) Congress mandated that the entitlement approach be rigorously tested under varying geographic, economic, and other circumstances. Because of the high cost of guaranteeing year-round jobs to all in-school disadvantaged youths, only a limited number of demonstrations can be undertaken with available funds. In order to test whether jurisdictions can feasibly implement substantial programs, only a limited number of Tier I projects will be implemented. These will cover entire jurisdictions or neighborhoods. In order to test a number of innovative approaches authorized by the Act and to get a wider geographic spread, a somewhat larger number of Tier II projects will be funded, demonstrating specific innovative entitlement approaches. These projects might cover only the area served by a particular school or small school district.

(d) To make sure that Entitlement Projects would be selected and operated as a national experiment, with the necessary flexibility to develop and test new and improved ideas, Congress did not authorize the Secretary to allocate funds to CETA prime sponsors by formula. Instead, the Secretary of Labor is required to determine how many Entitlement Projects are to be established and where they should be located.

§ 97.501 Regulations governing entitlement projects; definitions.

(a) The regulations governing Entitlement Projects shall be those in this subpart. The regulations at Part 98 of this title shall also apply to Entitlement Projects. However, to the extent a regulation in this subpart conflicts with a regulation at Part 98 of this title, the regulations in this subpart shall prevail.

(b) Definitions for terms used in this subpart may be found at § 94.4 of this title, except as stated within this subpart.

(c) The regulations in this part govern programs funded under the Comprehensive Employment and Training Act of 1973 prior to amendment and reauthorization in 1978 (Pub. L. 95-524, 92 Stat. 1909), and are thus in many particulars superseded by regulations implementing the reauthorized Comprehensive Employment and Training Act, Pub. Law 95-524, 92 Stat. 1909, which are being codified at 20 CFR Parts 675 *et seq.* Any questions regarding the applicability of any particular regulation in Title 29 should be addressed to the Regional Administrator for the Employment and Training Administration.

[43 FR 23504, May 30, 1978, as amended at 44 FR 37911, June 29, 1979]

§ 97.502 Funding of entitlement projects.

(a) Of the funds available under this subpart, the Secretary shall reserve a portion of the funds for research, technical assistance, consultants, and other appropriate purposes.

(b) The Secretary shall use the remaining funds under this subpart to fund selected Entitlement Projects.

§ 97.503 Eligibility for funds.

All prime sponsors under Title I of the Act shall be eligible to apply for Entitlement Project funds.

§ 97.504 Entitlement project application process (general).

(a) The Entitlement Project application shall consist of two steps, a preapplication procedure and a final application procedure.

(b) Selected projects will be financed to operate during the 18-month period from January 1978 through June 1979. It is anticipated that youth participation will generally coincide with the start of the second (or winter) semester of the 1977-78 school year, and that project completion will generally take place at the close of the 1978-79 school year.

§ 97.505 Entitlement project application schedule.

(a) *Letter of Intent.* By September 16, 1977, it is requested that prime sponsors under Title I of the Act who plan to apply for an Entitlement Project submit a letter indicating such intent.

(b) *Preapplication.* (1) By October 3, 1977, 5 p.m. e.d.t., preapplication submissions must be received in the ETA national office to be considered for funding.

(2) By October 26, 1977, a group of the more promising proposed Tier I and Tier II projects will be selected by the Department. Planning grants will be provided shortly thereafter.

(c) *Final Application.* (1) By December 14, 1977, 5 p.m., e.s.t., final application submissions must be received for consideration for full funding.

(2) By January 10, 1978, projects to be funded will be selected.

(3) After January 10, 1978, project grants will be awarded for the period of January 1978 through June 1979.

§ 97.506 Submittal of pre-applications.

(a) Prime sponsors planning to submit a preapplication for an Entitlement Project are requested to send a letter of such intent to the Employment and Training Administration (ETA) national office. A copy of the letter shall be sent to the appropriate Regional Administrator.

(b) The prime sponsor's preapplication is to be submitted as follows:

(1) Five copies are to be sent to the Regional Administrator of the appropriate ETA regional office (none need to have original signatures).

(2) One signed original and 14 copies are to be sent to the ETA national office.

§ 97.507 Pre-application specifications.

This section sets forth the types of information and data to be provided in the prime sponsor's preapplication. The preapplication should clearly indicate whether it is for a Tier I or Tier II project.

(a) The following information, which may be obtained from the approved Prime Sponsor Agreement, shall be provided with respect to the prime sponsor:

(1) (i) Geographic and political boundaries;

(ii) Most recent population survey data, by age, race, and sex;

(iii) Most recent data on poverty levels in the area, by age, race, and sex;

(iv) Labor force data including employment and unemployment figures by age, race, and sex; and

(v) Principal characteristics of the labor market (size of major industries, growth, trends, etc.)

(2) Information on the following items should be based on the prime sponsor's best estimates using the 1970 census and updates, the Office of Education Survey of Income and Education, and local school data.

(i) The size of the eligible youth population (16-19 years old, economically disadvantaged with no high school diploma or equivalent.)

(ii) Breakdown of the eligible youth population showing those currently in-school and out-of-school, and, for each of these groups, the total employed (part-time, full-time), unemployed, and not in the labor force.

(b) *Proposed Entitlement Area*—(1) *General.* (i) Preapplications must identify the geographic area to be designated as the Entitlement Area. The Entitlement Area must be a discrete geographic area which can be delineated by a single set of boundaries on a map.

(ii) The Entitlement Area for Tier I projects must contain at least 3,500 and no more than 12,000 eligible youth. For Tier II projects, the Entitlement Area must include 1,500 or less eligible youth. Prime sponsors may propose to administer an Entitlement Project under Tier I in an area with more than 12,000, or under Tier II in an area with more than 1,500, eligible youth provided they promise to finance 100 percent of the extra costs.

(iii) For Tier I projects, it is preferable that the geographic boundaries of the Entitlement Area coincide with the boundaries of the public secondary school system or an identifiable subpart of that system to minimize the number of eligible youth residing in the Entitlement Area who attend public schools located outside the Entitlement Area.

(iv) In designating the Tier I Entitlement Area, prime sponsors should consider locating jobs primarily in that area, for example, by including low-residential commercial districts as part of the Entitlement Area.

(2) *Information requested.* If the Entitlement Area is different from the prime sponsor's jurisdictional area, the information requested in paragraph (a) of this section should also be submitted for the Entitlement Area.

(c) *Estimated Job Demand in the Entitlement Area*—(1) *General.* Since employment opportunities must be provided to all eligible youth in the Entitlement Area, it is critically important to estimate the number of eligible youth who will seek jobs. The estimate must consider not only unemployed in-school youth, but those not looking for jobs who would take them if available, those who would choose in-school project jobs over possible employment alternatives, and those not currently in school who would return.

(2) *Information Requested.* Estimate, by the best available data, the number of youth who will seek entitlement jobs. Describe the estimation methodology.

(d) *Schools in Entitlement Area*—(1) *General.* The pre-application shall describe the public and private secondary school systems attended by project eligible youth residing in the proposed Entitlement Area.

(2) *Information requested.* For each public and private school system, provide:

(i) A description of the organization and administration of the secondary school system;

(ii) An identification of the proportion of the Entitlement Area's eligible secondary school population who are attending schools in the Entitlement Area;

(iii) A list of the names and addresses of the secondary schools (Grades 9-12) located in the Entitlement Area, and for each such secondary school:

(A) Identification of the most recent and reliable data on total pupil population, total pupil population of youths eligible for the Entitlement Project, and school dropout rates. The information on dropout rates should be as detailed as possible and describe the method by which these rates were calculated;

(B) A description of current formalized workstudy, cooperative and special career-education programs, and the numbers enrolled; and

(C) A description of notable special programs already being undertaken for economically disadvantaged youth to promote retention in, return to, and completion of school, including alternative education and programs; and

(iv) One or more maps of the proposed Entitlement Area which are marked to clearly:

(A) Delineate the geographic boundaries for each school system in the Entitlement Area;

(B) Identify the street location of each public and private secondary school in that area; and

(C) Show the attendance zone for each public secondary school.

(e) *Description of Existing Youth Programs.* Each pre-application shall:

(1) Describe the prime sponsor's existing Title I and Title II programs for the 16-19 year old youth population. The description should include funding levels and numbers of participating youth, separately calculated for each of the program activities listed below. To the extent possible, actual funding levels and numbers of youth served should be provided for Fiscal Year 1977 and planned figures for Fiscal Year 1978. Where applicable, the number of youth being served in each category should be broken out

between in-school and out-of-school participants:

(i) Classroom training;

(ii) On-the-job training;

(iii) Public Service employment;

(iv) Work experience; and

(v) Summer Youth program.

(2) To the degree possible, also describe the programs to be funded and number of youth to be served under the Youth Community Conservation and Improvement Projects, and Youth Employment and Training Programs.

(3) Provide the best possible dollar estimates of CETA youth program operations in the Entitlement Area in Fiscal Year 1977 and the level in Fiscal Year 1978 not counting Entitlement funds.

(4) Describe how current CETA youth programs will complement and be integrated with the Entitlement project; and

(5) Describe any innovative or model program in the prime sponsor area which would indicate a unique capacity to fulfill responsibilities under the Entitlement Project.

(f) *Innovative Approaches*—(1) *General.* (i) Prime sponsors may test a variety of innovative employment and training approaches within the larger context of the Entitlement program. These approaches should not cover an entire Tier I project, of which the basic purpose is to test the Entitlement notion itself, but may be used as a component of Tier I projects Tier II projects should include one or more of the following innovative approaches:

(A) The use of subsidies to private for-profit employers to encourage such employers to provide employment and training opportunities;

(B) Arrangements with unions to enable eligible youth to enter into apprenticeship training as part of the employment entitlement;

(C) Inclusion of economically disadvantaged youth between the ages of 19 and 25 inclusive who have not received their high school diploma or equivalent;

(D) Inclusion of occupational and career counseling, outreach, career exploration, and on-the-job training as part of the employment entitlement;

(E) Inclusion of youth under the jurisdiction of the juvenile or criminal justice system with the approval of the appopriate authorities.

(ii) The Department of Labor is especially interested in receiving proposals concerning the use of Entitlement funds to promote completion of high school by young unwed mothers.

(iii) Prime sponsors may propose to undertake other innovative approaches provided adequate justifiction is provided in their pre-applications.

(2) *Information requested.* Pre-applications shall describe innovative approaches, identify how these will be implemented and administered, describe the area in which these would be implemented, and estimate the size of the eligible population that would be involved.

(g) *Project Organization and Administration*—(1) *General.* (i) Because of the size and complexity of the Entitlement Projects, a single governmental, private nonprofit, or educational agency should be designated to assume overall management responsibility for program operations, including coordinating participant recruitment, work site development, operational relationships among schools, training activities and support services, program monitoring, report preparation, and maintenance of management information. The prime sponsor may delegate this responsibility.

(ii) For the Entitlement Project, the entire youth participant payroll shall be centrally administered by the prime sponsor or its delegatee management agency. Finally, since this is a demonstration project, extensive research, monitoring, and evaluation must be carried out by the prime sponsor under the supervision of the Department of Labor.

(2) *Information requested.* (i) Identify the responsible management agency and describe its proposed staffing structure for the Entitlement Project, its previous experience with employment and training programs, its specific capabilities for managing the Entitlement Project, and, if other than the prime sponsor, its relationship to the prime sponsor.

(ii) Indicate whether the prime sponsor or a management agency will administer the payroll and explain the rationale for the choice.

(iii) Indicate procedures which will be used for monitoring program operations.

(iv) Provide an assurance from the prime sponsor that it will cooperate fully in the design, implementation, and evaluation of the Entitlement Project.

(h) *Recruitment*—(1) *General*. The "Entitlement" concept can only be meaningfully tested if eligible youth are aware of the program. Therefore, prime sponsors shall provide information and do active outreach with respect to potential participants.

(2) *Information requested*. The procedures for informing, referring, recruiting, and determining eligibility of participants (both in-school and out-of-school) should be detailed, including identification of the private and/or public agencies to be utilized for this purpose. Particular reference should be made to the proposed role of the State Employment Service with respect to these functions.

(i) *Work-Site Development*—(1) *General*. (i) The employment or combination of employment and training guaranteed under this program is intended to be year-round with no limitation on the period of enrollment. However, this guarantee shall not exceed 20 hours per week for each youth employed during the school year, nor 40 hours per week during the summer and during school year breaks of 5 consecutive school days or more. During the school year, the guarantee must extend for at least 6 months and during the summer for at least 8 weeks. This guarantee shall not be provided to each youth for less than 10 hours per week during the school year and not less than 30 hours per week during the summer.

(ii) The opportunities guaranteed may take any of the forms specified in Section 326 of the Act, and are guaranteed to an eligible youth only so long as the youth remains enrolled in high school or in a certified or approved high school equivalency program. Out-of-school youth must return to school or enter an equivalency program in order to be eligible for the employment guarantee.

(iii) Based on estimates of the number of eligible youth who will seek employment in the Entitlement Project, the prime sponsor should plan for a larger number of jobs as a cushion in case the estimates are too low. The concept of an entitlement must be maintained; therefore, make work jobs for unexpected numbers of applicants are not permissible. In Tier I projects, jobs must be primarily located in the Entitlement Area.

(iv) Emphasis in work site development shall be placed on jobs having careful supervision and which provide youth with structured, productive work settings. Jobs shall be designed to introduce youth to the habits of successful work life and entry level or preparatory skills. Prime sponsors should make every effort to create new and different job classifications, occupations, and restructured jobs (as defined in § 97.702(g)(1)). (Sec. 327(a)(3).)

(2) *Information requested*. (i) The types and locations of jobs;

(ii) What phase-in, if any, would be necessary;

(iii) Anticipated work site (hiring agent) administration and supervisory structure for its role in Entitlement;

(iv) Types of hiring agencies (government, nonprofit, education institution, private); and

(v) Procedures to assure that restructured job proposals will be discussed with appropriate labor organizations, and that jobs will not be substituted for existing jobs.

(j) *Training support services*—(1) *General*. (i) The basic intent of Entitlement Projects is to provide employment. Training and support services, however, may be provided. For the purpose of planning, it should be assumed that a participant will spend most of paid program time (a maximum of 20 hours per week during the school year, 40 hours during the summer) engaged in direct job performance at the work site.

(ii) Any training that is conducted during paid program time should be directly related to the participant's specific work assignment.

(iii) Participants are to be paid for time spent in training in accordance with § 97.519.

(iv) Participants shall not be paid for time spent in supportive services (as defined in § 94.4(eee) of this title).

(v) Prime sponsors are discouraged from paying for staff and overhead costs for training and support services out of Entitlement funds. Prime sponsors should use funds from other sources to cover these costs.

(2) *Information requested.* Identify and describe the nature and extent of any proposed training and services, how these will relate to the proposed jobs, and the organizations and funds that will provide them.

(k) *Entitlement project-school relationship.* Each pre-application shall: (1) Describe planned cooperation between public and private secondary school system officials and the prime sponsor. At a minimum, the application should include written statements from school officials indicating their agreement to:

(i) Assist in participant (including dropout) recruitment and eligibility determinations;

(ii) Cooperate in the ongoing monitoring of enrollment and academic and attendance requirements; and

(iii) Provide necessary information for effective project management and evaluation;

(2) Describe special procedures and actions that will be taken to facilitate the return of school dropouts.

(3) Identify area agencies which offer high school equivalency programs and provide agreements comparable to those described above for school systems.

(l) *Commitment of local institutions and organizations*—(1) *General.* (i) Prime sponsors shall consult with the appropriate labor organizations in developing restructured and/or newly classified jobs during the pre-application stage.

(ii) Sec. 327(a)(4)(D) of the Act also requires that prime sponsors consult and work with a number of other local institutions and organizations in planning and implementing Entitlement Projects, including law enforcement and judicial agencies, youth groups, community-based organizations, the private sector, and the State Employment Service. Arrangements should be made with all appropriate groups during the pre-application period to obtain their assistance in implementing the program.

(2) *Information requested.* The pre-application should contain letters of intent to cooperate from appropriate labor organizations, government officials, the State Employment Service, and other local organizations, associations or agencies involved with the eligible youth population.

(m) *Data collection systems*—(1) *General.* It is anticipated that the national evaluation of Entitlement Projects will rely heavily on existing CETA and school system data collection systems. Effectively operating systems, therefore, are of great importance.

(2) *Information requested.* (i) Describe the currently operating prime sponsor data collection and processing systems, indicating whether the system is automated or manual, the types and availability of information kept on individual participants, and the typical lag-time between a participant's enrollment or status change and the availability of that information in the data system.

(ii) Describe data system reports, if any, which may be appropriate for the Entitlement program that are used for prime sponsor management purposes, but which differ from the regular reports on program and financial performance required by the CETA regulations for other CETA programs; indicate the frequency of their production.

(iii) Describe the currently operating data collection systems used by the secondary school systems in the proposed Entitlement Area with respect to student enrollment, attendance, performance and dropouts.

(n) *Budget*—(1) *General.* Costs shall be estimated for the period January 1978, through June 1979 (or the end of the 1978-79 school year, whichever comes first). Prime sponsors should commit funds available under other programs (in particular, funds under Titles I and III of the Act) to the Entitlement Project.

(2) *Information requested.* The pre-application shall specify separately the amount of Entitlement funds and non-Entitlement funds proposed to be

used, broken down by the following cost categories:

(i) Administration:

(A) Personnel; and

(B) Nonpersonnel;

(ii) Allowances;

(iii) Wages;

(A) School year; and

(B) Summer;

(iv) Fringe benefits;

(v) Work site supervisor salaries:

(A) School year; and

(B) Summer;

(vi) Work site expenses:

(A) Equipment; and

(B) Supplies;

(vii) Training; and

(viii) Services

[43 FR 23504, May 30, 1978, as amended at 44 FR 5438, Jan. 26, 1979]

§ 97.508 Selection of final applicants.

(a) *Pre-Application review criteria.* (1) The following basic criteria shall be used to evaluate both Tier I and Tier II pre-applications:

(i) Quality and thoroughness of documentation required by § 97.507;

(ii) Managerial, administrative, operating, and fiscal capability of the prime sponsor and, if applicable, the designated management agency.

(iii) Level of commitment of other resources to the Entitlement Project, especially funds under Title I and Sec. 304(a) (1), (2) and (3) of the Act;

(iv) Degree to which the Entitlement project will be integrated with local education, career development, and employment and training programs for economically disadvantaged youth;

(v) Commitment of cooperation and participation from local school systems, labor organizations, and other local groups;

(vi) The prime sponsor's and, if applicable, the managing agency's previous experience in administering in-school employment programs and career education and special programs for dropouts;

(vii) Proposed total cost, unit cost, and cost structure; and

(viii) Commitment and ability to satisfy the data needs required by the research and demonstration character of the Entitlement program;

(2) The following criteria shall be used to evaluate all pre-applications but shall have greater importance for Tier I pre-applications:

(i) Estimated rate of eligible youth participation within the proposed Entitlement Area; and

(ii) Capability of proposed local worksites to provide employment and training opportunities of sufficient quantity and quality to satisfy the objectives of the Entitlement program;

(3) The following criteria shall be used to evaluate all pre-applications but shall have greater importance for Tier II pre-applications:

(i) The extent to which quality work sites are proposed which include new and different job classifications, occupations, or restructured jobs; and

(ii) The quality and feasibility of proposed innovative approaches such as those listed in Section 327(b) of the Act.

(b) Each ETA regional office shall review pre-applications submitted by prime sponsors in its region, particularly those parts of the pre-applications which deal with managerial and administrative capability and fiscal and operational effectiveness. In making this review, each regional office shall take into account the prime sponsor's past performance with respect to other CETA programs.

(c) After regional office review, the Assistant Secretary for Employment and Training may make use of an impartial Review Panel to review each pre-application and the comments of the regional offices in accordance with the criteria set forth in paragraph (a) of this section, and to make recommendations to the Assistant Secretary for Employment and Training.

(d) The Assistant Secretary will review all the pre-applications and shall select final applicants based on the criteria set forth in paragraph (a) of this section taking into account any Review Panel recommendations and/or regional office comments. The Assistant Secretary shall select final applicants from areas with different socio-economic and regional circumstances such as different unemployment rates, school dropout rates, urban and rural variations, size and other such factors designed to test the efficacy of a youth job entitlement in a variety of different locations and circumstances (Sec. 327(a)(1)). Pre-applicants not selected shall be notified in writing of their nonselection, the reasons therefor, and that further documentation on their nonselection will be made available to them on written request.

§ 97.509 Planning grants.

(a) The Assistant Secretary shall notify selected final applicants in writing of the reasons for their selection, emphasizing the particular experimental aspects of their pre-applications which the Assistant Secretary judged especially meritorious.

(b) The Assistant Secretary shall award planning grants to the final applicants so that they can develop their grant applications along the lines initially set out in the approved pre-application.

(c) If, at the time of the planning grant, or during the planning phase, the final applicant determines that it is unable to develop its final application along the authorized lines, the final applicant shall notify the Assistant Secretary in writing immediately.

§ 97.510 Final application process.

(a) By 5 p.m., e.s.t., December 14, 1977, final applicants shall submit one signed original and 14 copies of their final applications to the Assistant Secretary or to any Review Panel designated by the Assistant Secretary. Two copies shall also be sent to the appropropriate Regional Administrator.

(b) Every final application shall contain, in detail, the information required by §§ 97.511-97.514.

(c) Only those prime sponsors which are selected to receive planning grants under § 97.509 shall be eligible to submit final applications.

§ 97.511 Program operation-related documentation.

Each final application shall describe:

(a) All additions, changes, and clarifications to the materials submitted in the preapplication, especially those materials requested by ETA as a result of its review of the preapplication;

(b) (1) Which of the following groups of youth, if any, will be considered by the prime sponsor to "reside" in the Entitlement Area and therefore be eligible (if otherwise eligible) for program participation:

(i) Youths confined in prisons or other correctional institutions in the area;

(ii) Youths in area hospitals, drug rehabilitation centers, half-way houses, etc.; and

(2) How the enrollment eligibility criteria and procedures will be applied to any of these or other groups of youth in institutional "residences" selected to be included in the program. Each such institutional "residence" included in the program shall be listed and briefly described;

(c) The procedures for verification and reverification of eligibility criteria and the method by which these will be implemented, and how the eligibility criteria and verification procedures will be explained to participants at the time of enrollment;

(d) Proposed policies for defining good cause for the rejection of a job or other nonparticipation by a participant; proposed procedures and timetables for making another job offer in such cases; and proposed procedures for the resolution of grievances.

(e) In detail, proposed standards for determining satisfactory performance including policies on attendance and lateness on the job or at training, suspension and termination policies and procedures, and the procedures and staff responsibilities for monitoring program performance.

(f) And attach agreements obtained from participating schools and high school equivalency (GED) programs indicating their willingness to provide a monthly status report for each participant certifying the participant's compliance or noncompliance with the school's or GED program's minimum academic and attendance requirements, including, from each participating secondary school and GED program, a description of the standards and policies for determining its minimum academic and attendance requirements;

(g) All worksites, proposed wages, and proposed employment and training opportunities.

(h) Proposed procedures for complying with the Family Education Rights and Privacy Act; include agreements with school systems with respect to this item; and

(i) (1) Payroll, audit, and other fiscal procedures;

(2) The current prime sponsor accounting and reporting system, with attention to the requirements of this subpart; and the current system for allocating personnel charges to multiple funding sources;

(3) The system used to requisition for periodic advances or reimbursements used for existing DOL funded programs. If the system is a Letter of Credit, indicate the average number and amounts of cash requests for the last 6 months; and

(4) The fiscal organization and staffing, internal controls, and other procedures for fiscal integrity and accountability. Attach:

(i) A copy of any Management Agency's last Certified Financial Statement;

(ii) A copy of the last DOL audit of the Prime Sponsor, along with response and further documentation regarding the outcome of open items; and

(iii) Copies of payroll, accounting and financial forms relevant to the Entitlement program.

§ 97.512 Program budget: Estimated costs.

Each final application shall describe program expenses whether proposed to be paid from Entitlement, other CETA, or other funds in sufficient detail and with sufficient justification to show the basis and rationale for the estimates and calculations. All budgetary material shall be organized by four categories of expense: Program Management, Participant Costs (wages and allowances), Work Site Supervision and Expenses and Training. Each of these major categories shall be subdivided into personnel and nonpersonnel costs. With respect to each major category and subcategory, the final application shall indicate which of the estimated costs are to be paid directly by the Prime Sponsor or its designee management agency, and which are to be paid under agreements with subcontractors and vendors.

§ 97.513 Agreements.

Each final application shall include all agreements which the prime sponsor has entered into for the purpose of the Entitlement program. These agreements shall include:

(a) All wage agreements entered into pursuant to § 97.519(a);

(b) An agreement with the State Employment Service agency;

(c) Agreements with every public, private nonprofit, and private-for-profit school in the Entitlement project area which is attended by eligible youths, and, to the extent feasible and appropriate, with every such school outside the Entitlement Project area which eligible youths from the Entitlement Project area attend;

(d) Agreements with all agencies, schools, and institutions in the Entitlement Project area which will offer, under the program, courses which result in a certificate of high school equivalency, and, to the extent possible and appropriate, with similar entities outside the Entitlement Project area which are open to eligible youths from the Entitlement Project area;

(e) All on-the-job training, employment guarantee and other agreements entered into with private nonprofit and for-profit employers;

(f) Any agreements with unions with respect to apprenticeship training; and

(g) Any other agreements entered into in order to run the Entitlement program.

97.514 Assurances and certifications.

Each application shall contain an assurance that the prime sponsor, in operating its Entitlement Project, will comply with the Prime Sponsor Agreement (PSA) including assurances and Certifications in the PSA and with the following additional assurances:

(a) Compliance with Title III, Part C, Subpart 1 of the Act, with other applicable provisions of the Act, and with the regulations in this subpart; and

(b) Compliance with the Hazardous Occupations Orders issued pursuant to the Fair Labor Standards Act and set forth at 29 CFR 570.50 et seq. with respect to the employment of youths under 18 years of age.

§ 97.515 Review of final applications; selection of projects.

(a) The review of final applications will take into account the requirement of sec. 327(a)(1) of the Act that prime sponsors selected to operate Entitlement projects be "from areas with differing socioeconomic and regional circumstances such as differing unemployment rates, school dropout rates, urban and rural variations, size, and other such factors * * *."

(b) (1) To implement sec. 327(a)(1), the Tier I final applications shall be separated into three classifications:

(i) Classification No. 1—Metropolitan cities or counties where the Entitlement Area encompasses only a portion of one or more local political jurisdictions (units of general local government)

(ii) Classification No. 2—Non-metropolitan areas (primarily rural areas) where the Entitlement Area encompasses a number of complete local political jurisdictions (units of general local government)

(iii) Classification No. 3—Metropolitan cities or counties where the Entitlement Area encompasses one or more complete local political jurisdictions (units of general local government).

(2) Each Tier I final application shall be reviewed only in competition with others within its classification. Within each classification, each application will be ranked against the others in the classification with respect to each of the Tier I project criteria described in paragraph (d) of this section.

A composite of the separate rankings with respect to each criterion shall be used to determine the final overall ranking of applications in each classification.

(c) Overall ranking will be made of all Tier II final applications using the Tier II project criteria described in paragraph (d) of this section.

(d) Final applications shall be reviewed against the following criteria. The first four criteria, equally weighted, shall be used to review Tier I projects. All five criteria, equally weighted, shall be used to review Tier II projects.

(1) *Management capability, feasibility and commitment.* This criterion will take into account:

(i) Managerial, administrative, and operating capability of the designated management agency;

(ii) Operational and management feasbility of the proposed Entitlement Area;

(iii) Commitment of cooperation and participation from local schools, GED programs, labor organizations, and other interested local groups.

(2) *Operational plans.* This criterion will take into account:

(i) Prime sponsor's estimated youth participation rate and plans for recruiting the eligible population, including procedures for verifying eligibility criteria;

(ii) Nature and quality of work sites, including proposed supervisory structure;

(iii) Procedures for review, control, and coordination of all operational components.

(3) *Financial system and program data system quality and commitment.* This criterion will take into account:

(i) Quality of procedures and systems to be used to comply with payroll, fiscal and accounting requirements;

(ii) Commitment and ability to satisfy data collection and reporting needs required by the research demonstration character of the Entitlement program.

(4) *Quality of budget and resource commitment.* This criterion will take into account:

(i) Analysis of proposed budget in terms of total cost, unit cost, and cost structure;

(ii) Level and nature of commitment of other local resources to the program, including the degree to which the Entitlement program will be integrated with existing local programs.

(5) *Innovative features.* This criterion will take into account the quality and feasibility of the innovative approaches of the Tier II Entitlement projects.

(e) Each ETA regional office shall review the final applications submitted by prime sponsors in its region to identify (1) any inaccuracies in estimates concerning planned use of other local funding resources, and (2) any mistakes of fact.

(f) The Assistant Secretary for Employment and Training may utilize a review panel to consider the Tier I and Tier II final applications, the results of onsite reviews and regional office assessments. If a panel is used, the panel shall provide rankings to the Department of Labor as described in this section, and shall make Entitlement project recommendations to the Assistant Secretary based on these rankings and the requirements of sec. 327(a)(1) of the Act.

(g) The Assistant Secretary shall make final selection of Entitlement projects on January 10, 1978, based on the specifications set forth in paragraphs (a), (b), (c), (d), and (e) of this section and on the recommendations of the panel. Final Tier I selections will include not more than two Classification No. 1 areas, one Classification No. 2 area, and two or three (depending on available resources) Classification No. 3 areas as described in paragraph (b) of this section. The number of final Tier II selections will depend on the cost of selected projects in relation to the available resources. Applicants shall be notified in writing of their selection. Those who have not been selected shall also be notified and justification for nonselection will be available upon request.

§ 97.516 Eligibility of participants.

(a) Every youth who resides in the geographic area of the Entitlement Project shall be entitled to participate in the program provided that, at the time of application and selection, the youth provides documented evidence which shows that:

(1) The youth is aged 16-19 inclusive, unless the Department has authorized the prime sponsor to administer an Entitlement Project for youths between 19 and 25 years of age inclusive;

(2) The youth has not received a high school diploma or certificate of high school equivalency;

(3) The youth has resided in the Entitlement Project area for 30 days. Newly discharged veterans however, are exempt from the 30 day residency requirement;

(4) The youth is economically disadvantaged. For purposes of this subpart, economically disadvantaged shall mean that the youth:

(i) Either constitutes a family of one, or is a member of a family,

(ii) And receives cash welfare payments under a Federal, State or local program, or whose income is at or below the poverty level as determined by the Office of Management and Budget (OMB).

For the purposes of this paragraph, a "family" is as defined in § 94.4(v) of this title, and the term "family income" is as defined in § 94.4(xxx) of this title. Family income shall be computed pursuant to § 94.4(s)(2) (i) and (ii) of this title. In the case of newly discharged veterans, income received while in military service shall be disregarded in computing family income; and

(5) The youth is:

(i) Enrolled in and attending a State-certified secondary school program leading to a high school diploma, or enrolled in such a program scheduled to begin within 30 days of the Youth's Entitlement program enrollment; or

(ii) Enrolled in and attending a certified or approved program leading to a certificate of high school equivalency (GED), or enrolled in such a program scheduled to begin within 30 days of the Youth's Entitlement program enrollment.

(b) If the youth is under the juvenile or criminal justice system, the appropriate authorities must approve the youth's participation or continued participation in writing.

(c) The citizenship provisions of § 95.32(d) of this title shall apply to the Entitlement program.

(d) (1) No otherwise eligible youth shall be excluded from participation because of any mental or physical handicap unless a qualified physician or psychologist certifies that the youth is mentally or physically incapable of obtaining a high school diploma or certificate of high school equivalency.

(2) All otherwise eligible mentally or physically handicapped youths, who are not certified as provided in paragraph (d)(1) of this section, are enti-

tled to participate in the program. The prime sponsor must take every step necessary to insure that such youths can participate. The prime sponsor may not segregate such youths from regular program activities, but must redesign these activities to ensure participation.

(e) Section 327(a)(4)(I) of the Act prohibits a youth from taking a job under this subpart if his or her relative has responsibility for hiring persons into that job. Therefore, prime sponsors shall assure that eligible youths are not placed in jobs by their relatives.

(f) Since jobs during the school year must last at least 6 months, and jobs in the summer must last at least 8 weeks, no youth may be enrolled in the program if the grant will end before the youth can complete the required period of employment.

(g) A participant reaching 20 years of age while in the program may remain in the program only until the participant completes either 8 weeks of full-time summer employment or 6 months part-time school-year employment. If upon reaching the 20th birthday the participant has already completed either 8 weeks of full-time summer employment or 6 months of part-time school-year employment, the participant shall be immediately terminated from the program. For projects that are serving youth 19-25, this requirement applies to youth reaching 26 years of age.

(h) A participant must continue to be economically disadvantaged as defined in § 97.516(a)(4) and to reside within the Entitlement Area or be terminated from the program. The prime sponsor shall re-verify participant economically disadvantaged status and residency after every 6 months of enrollment. In re-verifying economically disadvantaged status, however, wages and allowances received under the Entitlement program shall not be included when computing family income.

(i) A participant must meet minimum academic and attendance requirements of the secondary school or high school equivalency program in which the participant is enrolled or be terminated from the Entitlement program. The secondary school or GED program must provide monthly assurances that the participant is meeting minimum academic and attendance requirements.

(j) A participant who receives a high school diploma or a certificate of high school equivalency while in the program may remain in the program until the completion of either 8 weeks of full-time summer employment or 6 months of part-time school-year employment.

(k) A participant who has been found by the prime sponsor, after notice and an opportunity for a hearing, to have refused a job or to be otherwise refusing to participate in the program without good cause, shall be terminated from the program. The participant shall be given a termination notice which states that the participant may appeal the termination to the appropriate ETA regional office. Upon receipt of such an appeal the regional office shall process it as a formal allegation pursuant to Part 98 of this title.

(l) Any participant who has been terminated from the Entitlement program may re-enroll at any time provided the participant meets the eligibility criteria in this section, except that participants who have been terminated for failure to participate without good cause must wait 60 days before they may apply for re-enrollment.

[43 FR 23504, May 30, 1978, as amended at 44 FR 5438, Jan. 26, 1979]

§ 97.517 Work sites.

(a) Work sites shall:

(1) Not detract from or interfere with the educational curriculum of the participants and, whenever possible, shall complement that curriculum;

(2) Be primarily in the Entitlement Area or easily accessible, and in reasonable proximity to the residences of eligible youth;

(3) [Reserved]

(4) Maintain a cooperative relationship with local business, union and community group interests;

(5) Provide monitorable attendance and productivity standards, and capable on-site supervision; and

(6) Be developed and committed in such numbers and in such a way as to minimize the time between enrollment and assignment to a work site of any participant.

(b) Participants shall spend a majority of paid program time on the work site engaged in direct job performance. Training may be provided during the remaining time, provided the training is directly related to the specific work assignment.

§ 97.518 Allowable activities.

The Entitlement project may include any type of employment or training activity authorized under Title I of the Act.

§ 97.519 Participant benefits.

(a) The wage provisions of § 97.718 shall apply to the Entitlement program. In addition:

(1) In Entitlement projects in which the subsidization of private-for-profit employers is authorized, up to 100 percent of the wages may be paid. However, in the case of participants working at jobs and/or engaged in training provided by private-for-profit organizations, wages (and/or allowances) shall be paid, as in all cases, by the central payroll facility required by § 97.507(g)(1)(ii). No additional subsidies shall be provided by the Entitlement program to any such for-profit organization.

(2) Each participant shall spend the majority of his/her paid time in the Entitlement program in either work or training which is directly related to the assignment. Consequently, participants should be paid wages for both work time and training time, except when more than 50 percent of scheduled program time is spent in training. In such cases, allowances shall be paid in accordance with § 95.34 of this title for the period spent in training.

(b) Each participant, while in on-the-job training, work experience, or public service employment, shall be assured of the general benefits and working conditions for program participants required by § 98.24 of this title.

(c) No funds under the Entitlement program may be used for retirement benefits or costs.

§ 97.520 Academic credit.

Prime sponsors shall make appropriate efforts to encourage educational agencies to award academic credit for the competencies participants gain in the Entitlement program.

§ 97.521 Disregarding earnings.

The provisions of § 97.630 of this part shall apply to the Entitlement program.

§ 97.522 Maintenance of effort.

The provisions of §§ 97.719 and 97.720 shall apply to the Entitlement program.

§ 97.523 Administrative provisions; hearing provisions; and limitations on use of funds.

(a) All the provisions of Part 98 of this title shall apply to the Entitlement program except to the extent they conflict with the regulations in this subpart.

(b) to the extent that the research, demonstration, and informational requirements of this subpart conflict with the regulations contained in Subpart 98, the regulations in this subpart shall prevail. In order to determine whether a conflict exists, grantees shall consider both the regulations in this subpart and the terms of the Entitlement grants which implement the regulations in this subpart. For example, the regulations throughout this subpart contain requirements that the grantee submit detailed information not required by the regulations in Part 98. Because of the research and demonstration nature of the Entitlement program such information is essential. As a result, the Entitlement grants, which implement the regulations contained in this subpart, contain reporting and other requirements which are both different from and more detailed than those in Part 98. In such cases, the grantees shall follow the Entitlement grant requirements. Other specific examples of such conflicts are as follows:

(1) Since under the regulations in this subpart, the Entitlement program is administered by the national office, the terms regional office and Regional Administrator in Subparts A and B of

Part 98, should be interpreted to mean national office and Grant Officer; and

(2) To the extent that Entitlement grants require the use of categories for allocating costs for reporting purposes which are different from or more detailed than the allocable cost categories in § 98.12 of this title, the grantee shall allocate costs pursuant to the categories in the Entitlement grant.

(c) Questions regarding the applicability of specific provisions of Part 98 which may appear to conflict with the regulations or grant shall be addressed to the Grant Officer.

(d) No funds under the Entitlement program may be used to pay for time spent in the Entitlement program by an enrollee in excess of 20 hours a week during the school year or 40 hours per week during the summer and during school year breaks of 5 consecutive days or more. The minimum paid program time guaranteed for each employed youth shall be 10 hours per week during the school year and 30 hours per week during the summer.

(e) Prime sponsors may use program funds under both Title I and sec. 304(a)(3) of the Act for the Entitlement Project. Funds under sections 304(a)(1) and 304 (a)(2) of the Act may also be used provided modifications are obtained for those grants. Funds received under Section 304 shall be integrated with funds received under this subpart. Therefore, the regulations under this subpart shall apply to such funds. Title I funds, however, may not be integrated, but must be separately accounted for. The Title I regulations shall apply to such funds. This, for example, Entitlement Project wages and allowances paid for with Title I funds, shall be paid at the wage rates and allowance rates set forth in the Title I regulations. Also, for example, only 20 percent of the Title I funds used for the Entitlement project may be spent for administration.

[43 FR 23504, May 30, 1978, as amended at 44 FR 5438, Jan. 26, 1979]

(Sec. 702(a) of the Comprehensive Employment and Training Act, as amended, 29 U.S.C. 982(a)).

Subpart G—Youth Community Conservation and Improvement Projects

AUTHORITY: Sec. 702(a) Comprehensive Employment and Training Act of 1973, as amended (Pub. L. 93-203, 87 Stat. 839 (29 U.S.C. 801 et seq.); Pub. L. 93-567, 88 Stat. 1845 and Pub. L. 94-444, 90 Stat. 1476).

SOURCE: 43 FR 43657, Sept. 26, 1978, unless otherwise noted.

GENERAL

§ 97.601 Scope and purpose.

(a) This subpart contains the Department of Labor's regulations governing the establishment and operation of Youth Community Conservation and Improvement Projects (YCCIP) under Title III, Part C, Subpart 2, of the act. The regulations at Part 98 of this title also apply to the YCCIP program, except to the extent noted in this subpart. The provisions at §§ 97.603 through 97.631 apply to the grants to eligible applicants which are title I prime sponsors.

(b) To the extent the regulations set forth in this subpart conflict with other regulations promulgated under the act in 29 CFR Parts 94 through 99, the requirements contained in this subpart shall apply.

(c) This program seeks to provide youth experiencing severe difficulties in obtaining employment with well supervised work in projects that produce tangible benefits to the community. In order to adequately meet community needs, the participation of neighborhood and community based organizations in the program is stressed. This program places predominant emphasis on the development and provision of jobs. Any training must be directly related to the development of specific skills needed for the job. Participation should result wherever possible in the attainment of academic credit for competencies gained from employment. The Department expects that supervisors will play a strong role in introducing and reinforcing desirable work habits. Program operators shall target activities primarily on economically disadvantaged youth, because these individuals, particularly minorities, have the highest unemployment rates, highest dropout rates and greatest difficulties in obtaining employment. Since it is expected that most participants will be school dropouts or have high dropout potential, projects should be structured so that academic credit may be granted for work experience. Youth are to be encouraged to remain in school or return to school if they are out of school. Any programs developed for in-school youth must be flexible enough to accommodate the scheduling needs of such youth.

(d) The Department of Labor will provide allocations of funds for States rather than to eligible applicants, but will provide eligible applicants with program funding estimates to be used by them for planning purposes. Eligible applicants are expected to submit quality project applications selected through an objective process at the local level. The Department will review these project applications, and will fund only those projects which fulfill the requirements of the program. Under certain conditions, an eligible applicant may be awarded less than its program funding estimate, with the remaining funds awarded for acceptable projects to eligible applicants elsewhere in the State.

(e) The regulations in this part govern programs funded under the Comprehensive Employment and Training Act of 1973 prior to amendment and reauthorization in 1978 (Pub. L. 95-524, 92 Stat. 1909), and are thus in many particulars superseded by regulations implementing the reauthorized Comprehensive Employment and Training Act, Pub. Law 95-524, 92 Stat. 1909, which are codified at 20 CFR Parts 675 *et seq.* Any questions regarding the applicability of any particular regulation in Title 29 should be addressed to the Regional Administrator for the Employment and Training Administration.

[43 FR 43657, Sept. 26, 1978, as amended at 44 FR 37911, June 29, 1979]

§ 97.602 Definitions.

Definitions for abbreviations and major terms used in this subpart are contained in § 94.4 of this title. The following definitions are specific to this subpart:

(a) "Appropriate labor organization" shall mean a local labor organization that has jurisdiction to represent employees in the eligible applicant's area in the same or substantially equivalent jobs as those proposed to be filled or already filled by YCCIP participants.

(b) "Eligible applicant" shall mean any prime sponsor qualified under section 102 of CETA, sponsors of Native American programs qualified under section 302(c)(1) of CETA and sponsors of migrant and seasonal farmworkers programs qualified under section 303 of CETA.

(c) "Low-income housing" shall mean dwellings of individuals whose incomes are at or below 125 percent of the poverty level which are privately owned and owner occupied, privately owned by a nonprofit organization, or units of public housing. For weatherization or winterization projects funded and approved by the Federal Energy Administration or the Community Services Administration, "low-income housing" shall include privately owned rental housing.

(d) "Neighborhood and community-based organizations" shall mean (1) neighborhood groups organized at the local level to operate employment and training programs, and which have demonstrated local effectiveness. Such organizations can be private nonprofit organizations or associations; and (2) community-based organizations as defined in § 97.702(c).

(e) "Program funding estimate" shall mean the level of funds announced by the Department for each eligible applicant which is a prime sponsor qualified under section 102 of CETA for its planning purposes. The estimate is determined by apportioning the State allocation among such eligible applicants for YCCIP, using the unemployment data available for each such eligible applicant area in proportion to the unemployment data for the State.

(f) "Project" shall mean "Community Conservation and Improvement Project" which provides constructive work, which would not otherwise be carried out, conducted by youths, under the guidance of skilled supervisors, which (1) results in tangible outputs or a specific product; (2) benefits participants in terms of work habits, skills, and attainment of academic credit where applicable; and (3) will be completed within a definable period of time not to exceed 12 months.

(g) "YCCIP" shall mean the Youth Community Conservation and Improvements Projects.

§ 97.603 Eligible applicants.

Any eligible applicant may apply for funds for projects in its area.

§ 97.604 Allocation of funds; program funding estimates.

(a) *Allocations.* Allocations shall be provided to the States on the basis of the formula and distribution requirements in section 333 of the Act.

(b) *Program funding estimates.* The Secretary will provide eligible applicants with program funding estimates based on their relative share of the State's unemployed.

§ 97.605 Award of funds.

(a) The RA may award to an eligible applicant an amount of funds equal to the program funding estimate when sufficient approvable project applications are submitted by the eligible applicant.

(b) The RA may award to an eligible applicant an amount of funds greater than the program funding estimate when another eligible applicant within the same State has not submitted to the RA a Preapplication for Federal Assistance or sufficient approvable project applications within the time required.

§ 97.606 Reallocation of funds.

The RA shall reallocate funds from one State to another when the RA determines that an eligible applicant will not be able to use the funds within a reasonable period of time and that no other eligible applicant within the same State will be able to effectively use the funds within a reasonabale period of time. The notice and comment procedure described in § 98.11(d) of this title shall apply to such reallocations, except that the reference in § 98.11(d) to paragraph (c) (concerning reallocation based on need) does not apply.

§ 97.607 Redistribution of funds.

The RA shall redistribute funds, after a grant has been signed, from one eligible applicant to another within the State when:

(a) The RA determines that the eligible applicant will not be able to use the funds within a reasonable period of time. The actions described in § 98.11(d) of this title shall apply, except that the reference in § 98.11(d) to paragraph (c) (concerning reallocation based on need) does not apply; or

(b) The RA determines that the eligible applicant's performance is inadequate or that it has failed to comply with the act or the regulations. The procedures set forth in § 98.11(b) of this title shall apply to such cases.

GRANT PLANNING, APPLICATION, AND MODIFICATIONS PROCEDURES

§ 97.608 Eligible applicant planning process.

Every eligible applicant which desires funds shall submit a preapplication pursuant to § 97.609 and a plan pursuant to §§ 97.615 through 97.619. The eligible applicant shall utilize the planning process and planning council as described in § 95.13(b) and (c) of this title and the youth council described in § 97.705(b) of this part in developing its plan.

§ 97.609 Pre-application for Federal Assistance (Standard Form 424).

(a) An eligible applicant interested in applying for funds shall submit a Standard Form 424 to the RA, governor and areawide A-95 clearinghouse by a date set by the RA.

(b) The RA may require that the additional information specified below be submitted at the same time as the Preapplication for Federal Assistance. Where the option to require additional information is exercised, an approval or disapproval decision concerning the adequacy of that information must be provided to the eligible applicant by five (5) working days after the submission date of the Standard 424. Further, the additional information submitted by the eligible applicant will not be required for resubmission in the formal proposed plan. The information that may be required in the preapplication includes a description of methods to be used to:

(1) Solicit applications, in particular, from neighborhood and community-based organizations, and for soliciting comments on the project applications from the planning and youth councils § 97.613(g);

(2) Objectively select and rank project applications § 97.614; and

(3) Insure involvement of appropriate labor organizations.

§ 97.610 Project planning process.

(a) In developing the program specifications, eligible applicants may consider proposals for any allowable activities under YCCIP or may elect to limit the types of activities for which project applicants will compete. In the latter case, the eligible applicant must secure the approval of the planning and youth councils in the selection of these activities. The eligible applicant may limit the types and number of project applications by:

(1) Establishing parameters regarding the size and duration of all projects;

(2) Identifying priority community needs, e.g., environmental, weatherization, and housing rehabilitation projects; and

(3) Identifying specific neighborhoods or geographic areas in which projects may be conducted.

(b) A program agent under title II may elect to be a program agent under this subpart. Program agents under YCCIP shall approve or disapprove projects, administer the program in their areas, and be subject to the limitation of funds provided in § 97.631.

(c) Each eligible applicant shall establish procedures for its own use and the use of any program agent(s) which will assure that potential project applicants (as defined in § 94.4 (ppp) of this title), particularly neighborhood and community-based organizations are notified of the project application process and the cut-off date for acceptance of project applications. The method of notification may be public hearings or public notice in the newspapers, bulletins, or other appropriate media.

§ 97.611 Project application content.

All project applications must contain the following information:

(a) Name of agency or organization applying for project funds, type of agency (community-based organization, local educational agency as defined in § 97.702, etc.) and, if applicable, the program agent to which it was submitted;

(b) *Description of Project.* (1) The need for the project in the area in which it will be conducted and how the project will meet the need;

(2) The types of jobs youth are to perform;

(3) The full-time supervisor to youth ratio, or its equivalent and the reason for selecting the ratio;

(4) The qualifications of the supervisors in terms of necessary skills and experiences, or where these are not yet specifically identified, assurances that supervisors will be adequately trained in the skills needed to carry out the projects and in instructing participating youth and a description of the method for selecting supervisors; and

(5) The beginning and ending dates of the project;

(c) *Participants.* (1) Identification of the number of participants to be enrolled and their expected duration of employment, not to exceed 12 months;

(2) List of target groups to be served; and

(3) Description of the expected benefits to participants, e.g., skills to be obtained, other positive terminations anticipated, academic credits to be earned, etc.;

(d) *Job titles, descriptions and wages.* (1) The principal job titles, job descriptions, and hourly wages to be paid for each. If job restructuring as defined in § 97.702(g) is to occur, a description of the methods of analysis to be used, the expected results, the methods for soliciting consultation of appropriate labor organizations, and the relevant expertise of personnel who performed the restructuring; and

(2) The participation of appropriate labor organizations and other affected organizations with regard to job classifications and wage rates;

(e) *Administration.* A description of the project applicant's organization (including type of organization, purpose of organization), experience in operating employment and training programs and/or providing public services, and a description of the accounting and financial management procedures and/or arrangements; and

(f) *Budget.* Totals for the following line items:

(1) Direct program costs as defined in § 98.12(f)(6)(iii) of this title;

(2) Costs of participant wages and fringe benefits;

(3) Costs of wages and fringe benefits of work-site supervisors;

(4) Costs of job-related training;

(5) Costs of materials, supplies and equipment used by participants on the job; and

(6) Cost of supportive services for participants.

§ 97.612 Project application submission.

The project applicant shall submit applications to the program agent for its area, or to the eligible applicant if there is no program agent for its area.

§ 97.613 Project approval.

(a) Criteria shall be established by the eligible applicant to be used consistently by itself and any program agents for evaluating and approving project applications. These criteria are subject to review and comment by the Youth and Planning Councils.

(b) Each project, in order to be approved, must:

(1) Provide tangible output and measurable benefits which will accrue to the community;

(2) Provide benefits to participants in terms of work habits, skills, and attainment of academic credit where applicable;

(3) Be labor intensive;

(4) Assure an adequate level of supervision, taking into account the complexity of the jobs to be created; and

(5) Describe or assure adequate qualifications for supervisors in terms of necessary skills and experience.

(c) Project applicants must assure that the project will result in an increase in employment opportunities over those which would otherwise be available, and that:

(1) It will not result in the displacement of currently employed workers;

(2) It will not substitute jobs assisted under this subpart for existing federally assisted jobs;

(3) It will not employ any youth when any other person is on layoff by the employer from the same or any substantially equivalent job in the same area;

(4) It will not employ any person to fill a job opening created by laying off or terminating the employment of any regular employee, or otherwise reducing the regular work force, in anticipation of filling vacancies by hiring youth to be supported under YCCIP;

(5) It will not infringe upon the promotional opportunities which would otherwise be available to persons currently employed in public service not subsidized under the Act;

(6) It will not permit a job to be filled in other than an entry-level position in each promotional line until applicable personnel procedures and collective bargaining agreements have been complied with; and

(7) Where job restructuring will occur or where new job classifications will be developed, these will not be done in order to negate established personnel procedures, or to displace currently employed workers.

(d) The project approval process shall assure that project applications from neighborhood and community-based organizations of demonstrated local effectiveness in providing employment and training services to youth will be considered before applications from other project applicants are considered. Where it can be documented that the neighborhood or community-based organization does not have the administrative capability to run the project, or its project application does not meet the criteria established by the prime sponsor, then project applications from other than neighborhood and community-based organizations may be considered: *Provided,* The same criteria are used.

(e) Program agents shall review the project applications submitted to them, approve or disapprove them, and submit all project applications to the eligible applicant, indicating their approval of disapproval.

(f) The eligible applicant shall review those project applications received, including those submitted by any program agent(s). When reviewing those submitted by a program agent, the eligible applicant shall give due consideration to project applications approved by the program agent.

(g) After review, the eligible applicant shall submit all project applications to the youth and planning councils for comment and recommendations.

(h) After review of any comments and/or recommendations of the planning and youth councils, the eligible applicant shall approve or disapprove the project applications. The eligible applicant, however, shall not disapprove a project application recommended for approval by the planning council unless it has first considered any comments and recommendations made by the planning and youth councils and unless it has provided the councils with a written statement of its reasons for disapproval (sec. 336(c)(2)).

(i) In cases of disapproval, the eligible applicant shall inform the project application in writing of its disapproval. It must also indicate the reasons for the disapproval.

§ 97.614 Project prioritization.

(a) Each eligible applicant shall rank, in terms of their relative priority, approved project applications.

(1) It shall first rank those projects having highest priority whose total proposed cost does not exceed the amount available for projects (see § 97.631).

(2) It shall then rank those additional approved project applications, if any, for future funding consideration as described in § 97.615 (b)(2).

(b) Eligible applicants shall document the rationale used for ranking the approved project applications.

§ 97.615 Submission of the proposed plan.

(a) Each eligible applicant must submit a proposed plan to the RA by a date established by the RA. The proposed plan shall consist of prioritized project applications as well as the items described in §§ 97.616 through 97.619. The eligible applicant shall also submit any project applications approved by any program agents, but disapproved by the eligible applicant, together with a description of the due consideration which was accorded to them.

(b) Each eligible applicant shall submit two separate lists of project applications prioritized in accordance with the provisions fo § 97.614:

(1) A primary listing of prioritized proposed projects not to exceed 100 percent of the program funding estimate; and

(2) A secondary listing of prioritized proposed projects without dollar or number limitations. This second listing will be considered for future funding in instances where:

(i) Projects submitted within the 100 percent are not acceptable to the RA;

(ii) A project is subsequently found to be non-productive or is withdrawn; or

(iii) Additional funds become available.

(3) Prime sponsors submitting a secondary listing will be given primary consideration for receipt of additional funding.

§ 97.616 Application for Federal Assistance.

(a) Standard Form 424, Application for Federal Assistance, shall be submitted.

(b)(1) Where there is an appropriate labor organization, it shall be given either the complete proposed plan or a summary of the proposed plan which includes a list of all job classifications and wage rates and afforded 30 calendar days to make written comments to the eligible applicant prior to the submission of the proposed plan to the RA.

(2) The comment and publication procedures provided in § 95.15 of this title shall apply to YCCIP; except that, the RA shall establish a schedule for submission of the grant application which may include a request that a preliminary copy of the grant application be submitted to the regional office for review. However, the grant application cannot be executed until 30 days after submission of the plan to appropriate organizations during

which time comments can be submitted to the RA and prime sponsor.

(3) Project applicants and other interested parties must be notified through appropriate media that they may review the proposed plan at a designated location.

§ 97.617 Narrative description.

The narrative description shall contain the eligible applicant's overall strategy and design and shall describe the procedures to be used to implement and administer the program including:

(a) Methods used to solicit project applications, in particular those from neighborhood and community-based organizations;

(b) Methods used to approve and prioritize project applications;

(c) The criteria used for approving and prioritizing project applications;

(d) The participation of appropriate labor organizations;

(e) Recruiting methods to be used if different from those described in the Prime Sponsor Agreement (PSA). This description should include coordination with other programs under the Act;

(f) The target groups to be served and procedures used to assure that economically disadvantaged youths receive preference;

(g) Plans for assessing the results of the projects to both the participants and the community; and

(h) A description of the administrative structure including subgrant and contract administration, which will be used if different from that described in the PSA.

§ 97.618 Budget Information Summary and Program Planning Summary.

A Budget Information Summary and Program Planning Summary shall be completed by the eligible applicant and submitted as part of the plan. Eligible applicants shall use the classifications of costs by category which are provided in the grant package instructions.

§ 97.619 Special assurances and certifications.

(a) The proposed plan shall contain the following special assurances:

(1) Compliance with Prime Sponsor Agreement (PSA), including the assurances and certifications in the PSA;

(2) Compliance with the Youth Employment and Demonstration Projects Act of 1977 and the regulations of 29 CFR 97.601-97.631 and will be administered consistent with the Act and 29 CFR Subparts G and H;

(3) Compliance with the Hazardous Occupations Orders issued pursuant to the Fair Labor Standards Act and set forth at 29 CFR 570.50 *et seq.* with respect to the employment of youths under 18 years of age;

(4) Assurance that any person hired to supervise youth, under this subpart, will not impede the promotional rights of existing employees; and

(5) Assurance that local labor organizations who represent employees engaged in work similar to that proposed to be performed under this subpart are notified in writing of all wage rate and job classification changes.

§ 97.620 Plan review and approval.

(a) The RA shall first review the project applications to determine if they meet the requirements of the Act, the regulations of this subpart and other applicable law.

(b)(1) Using the factors and assurances set forth in § 97.613 (b) and (c), the RA shall consider ranked projects and may approve projects up to 100 percent of the amount of the eligible applicant's program funding estimate which is available for projects.

(2) The RA shall disapprove any project application which does not meet the factors and assurances of § 97.613 (b) and (c) and other requirements of the Act, the regulations and other applicable law. RA's will review individual applications for outstanding disagreements between appropriate labor organizations, employers and eligible applicants with respect to jobs that have been restructured. RA's will provide in writing to the eligible applicant an explanation for any prioritized project applications that are rejected.

(c) If there are not sufficient approvable prioritized project applications in the plan to equal the amount of the eligible applicant's program funding estimate which is available for projects, the RA shall allow the eligible applicant 30 days in which to modify the prioritized project applications which were submitted to the RA. If the eligible applicant fails to submit revised project applications or submits revised project applications which are not approvable, the RA shall award the unused funds to another eligible applicant within the State. In States with only one eligible applicant or in States where no other eligible applicant will be able to spend these funds within a reasonable period of time, the RA shall initiate the reallocation procedures set forth in § 97.606.

(d) The approval of the proposed plan will be in accordance with § 95.18 of this title.

(e) The RA shall determine whether or not the eligible applicant gave due consideration to project applications approved by any program agent, but disapproved by the eligible applicant.

§ 97.621 Modifications.

(a) Any modification to the plan will be in accordance with the provisions of § 95.21 of this title, except that in § 95.21(a) the term "project(s)" shall be read for the term "program activities," and references to public service employment shall be disregarded.

(b) Appropriate labor organizations and the RA must be notified in writing of all wage rate and job classification changes under the youth plan at least 15 calendar days prior to implementing such changes. If the appropriate labor organization disagrees with the proposed changes in job classification or wage rates, the dispute must be resolved in writing prior to implementing such changes.

ADMINISTRATIVE PROVISIONS

§ 97.622 Administrative provisions.

(a) Eligible applicants shall comply with the administrative provisions of Part 98 of this title in operating programs pursuant to this subpart, except as stated in §§ 97.629 and 97.631.

(b) Eligible applicants or program agents shall enter into financial agreements with project applicants except as provided in paragraph (d) of this section. With respect to such agreements, program agents are governed by the fund restrictions set forth in § 97.631.

(c) Eligible applicants must share administrative costs as provided under § 97.631(a) with the program agent(s).

(d) The eligible applicant or program agent may enter into a nonfinancial agreement with a project applicant if there is a written agreement between the project applicant and the eligible applicant that clearly identifies the adminstrative and programmatic benefits of such a non-financial agreement.

PROGRAM OPERATIONS

§ 97.623 Eligibility for participation.

(a) In order to participate, an individual must at the time of application and enrollment:

(1) Be 16 through 19 years of age, inclusive; and

(2) Be unemployed, as defined in § 94.4(ggg) of this title.

(3) If at the time of enrollment in any other program under the Act, a 16 through 19 year old youth was unemployed, that individual may be transferred into this program: *Provided:* The individual meets the age eligibility at the time of transfer.

(b) Eligible applicants shall give preference to the economically disadvantaged, as defined in § 94.4(s) of this title.

(c) Appropriate efforts shall be made to serve those youths who have severe difficulties in obtaining employment, as described in § 97.714(e).

(d) The citizenship and veterans provisions of § 95.32 (d) and (e)(1) of this title shall apply to YCCIP programs.

(e) No youth may enroll in full-time employment opportunities if the eligible applicant determines that there is evidence the youth dropped out of high school in order to participate (sec. 353(f)(2)).

(f) Each participant shall be limited to a maximum enrollment of 12 months with no more than two terminations and reenrollments provided age eligibility is met at the time of each reenrollment. However every effort should be made to transition participants into unsubsidized jobs or other CETA opportunities upon completion of the 12 months enrollment (sec. 331).

§ 97.624 Acceptable project activities.

(a) Each project shall insure that each participant does constructive work in terms of individual and community benefits during the participation in the program. Such employment shall be in projects that may include the rehabilitation or improvement of public facilities (including accessing them for the handicapped by removing architectural barriers); neighborhood improvements; weatherization and basic repairs to low-income housing as defined in § 97.602(c); energy conservation including solar energy projects, especially those utilizing materials and supplies available without cost; and conservation, maintenance, or restoration of natural resources of non-Federal publicly held lands.

(b) Training provided must be directly related to a participant's job.

(c) Where in-school youth are served, they must be in a structured combination work and education program.

§ 97.625 Participant benefits.

(a) Participants shall be paid wages as described in § 97.718(d).

(b) Each participant shall be provided the benefits and working conditions as provided in § 98.24 of this title.

§ 97.626 Academic credit.

Eligible applicants shall make appropriate efforts to encourage educational agencies and postsecondary institutions to award academic credit for the competencies participants gain from their employment.

§ 97.627 Substitution for Title I programs.

Programs funded under YCCIP shall be supplementary to, and shall not replace programs and activities for youth available under title I of the Act (see §§ 95.13(b)(3) and 95.14(b)(3)(ii)(G) of this title).

§ 97.628 Supervisory personnel.

Each project must have an adequate number of skilled supervisors. There must be at least the equivalent of 1 full time supervisor to every 12 youths, unless satisfactory justification for another ratio is provided in the eligible applicant's plan. Supervisors must have the skill needed to carry out the project and must be able to instruct participants in those skills.

§ 97.629 Materials, equipment, and supplies.

(a) Funds may be expended subject to the limitation of § 97.631 for the acquisition, lease or rental of supplies, equipment, and materials. The provisions of § 98.12(c) of this title which prohibits the use of funds for the costs of materials which become a part of the construction do not apply.

(b) Eligible applicants are encouraged to make use of resources from Community Services Administration and Federal Energy Administration to supplement YCCIP funds. Eligible applicants should be aware that Federal statutes which provide funds for materials, supplies, etc., often have Davis-Bacon related provisions which may affect wage rate levels in projects involving construction.

§ 97.630 Earnings disregarded.

Earnings received by any youth under this subpart shall be disregarded in determining the eligibility of the youth's family for, and the amount of, any benefits based on need under any Federal or federally assisted programs.

§ 97.631 Limitation on use of funds.

(a) No more than 5 percent of the total funds may be used by the eligible applicant and program agent(s) for administrative costs including those supportive costs as defined in § 98.12(f)(6)(ii) of this title and those costs incurred in the establishment and maintenance of the prime sponsor's Planning Councils, in publishing a Comprehensive Manpower Plan, and in monitoring and providing technical assistance to contractors and subgrantees. The remaining funds must be made available for projects.

(b) Of the project funds:

(1) At least 65 percent of the funds must be used for participant wages and fringe benefits, unless adequate

justification is provided in the eligible applicant's plan.

(2) No more than 10 percent may be used by project applicants for administrative costs including those direct program costs defined in § 98.12 (f)(6)(iii).

(3) Any remaining funds may be used for training of participants, materials, equipment, supplies, on-site supervisors, and supportive services, etc. Such materials and supplies which become a part of the construction project may be chargeable to a training cost category provided these costs are incurred for participants in either a work environment or classroom training.

§ 97.632 Maintenance of effort.

The provisions of § 97.719 shall apply to YCCIP programs

Subpart H—Youth Employment and Training Programs

AUTHORITY: Sec. 702(a) Comprehensive Employment and Training Act of 1973, as amended (Pub. L. 93-203, 87 Stat. 839 (29 U.S.C. 801 et seq.); Pub. L. 93-567, 88 Stat. 1845 and Pub. L. 94-444, 90 Stat. 1476).

SOURCE: 43 FR 43662, Sept. 26, 1978, unless otherwise noted.

GENERAL

§ 97.701 Scope and purpose.

(a) This subpart contains the regulations for the Youth Employment and Training Programs (YETP) which are authorized by Title III, Part C, Subpart 3 of the Act. These regulations also implement, with respect to YETP, the administrative provisions found in sections 341 through 347 of the Act. The regulations at part 98 of this title also apply to YETP programs except as indicated in this subpart. The regulations at sections 703 through 721 of this subpart apply only to eligible applicants which are title I prime sponsors. To the extent the regulations set forth in this subpart conflict with other regulations issued under the Act in 29 CFR, Parts 94 through 99, the regulations contained in this subpart shall prevail (sec. 357).

(b) It is the purpose of this program to enhance the job prospects and career opportunities of young persons to enable them to secure unsubsidized employment in the public and private sectors of the economy. It is not the purpose of this program to provide make-work activities but rather to provide youth, especially economically disadvantaged youth with opportunities to learn and earn, which will lead to meaningful employment opportunities after they have completed the program. In addition, this program explores methods of dealing with the structural unemployment problems of youth and the immediate difficulties of youth in need of and unable to find jobs (sec. 341).

(c) In order to achieve the highest quality of program services, coordination with existing services for youth is essential. These services include: Activities funded under the other parts of CETA; employment and educational services provided by local educational agencies, and post-secondary institutions; services offered by State Employment Security Agencies; programs funded through other sources such as community-based organizations; and employment and educational activities of business, labor, and nonprofit institutions in the community.

(d) Information gained from the operation of YETP will be considered by the Department in developing future legislative and program designs.

(e) The regulations in this part govern programs funded under the Comprehensive Employment and Training Act of 1973 prior to amendment and reauthorization in 1978 (Pub. L. 95-524, 92 Stat. 1909), and are thus in many particulars superseded by regulations implementing the reauthorized Comprehensive Employment and Training Act, Pub. Law 95-524, 92 Stat. 1909, which are codified at 20 CFR Parts 675 *et seq.* Any questions regarding the applicability of any particular regulation in Title 29 should be addressed to the Regional Administrator for the Employment and Training Administration.

[43 FR 43662, Sept. 26, 1978, as amended at 44 FR 37911, June 29, 1979]

§ 97.702 Definitions.

Definitions of abbreviations and major terms used in this subpart are contained in § 94.4 of this title. Special definitions applicable to terms found in this subpart are as follows:

(a) "Appropriate labor organization" shall mean a local labor organization that has jurisdiction to represent employees in the eligible applicant's area in the same or substantially equivalent jobs as those proposed to be filled or already filled by YETP participants.

(b) "Career employment experience" shall mean a program activity for in-school youth which is a combination of both well supervised employment (work experience or on-the-job training) supported under YETP and certain transition services including, at a minimum, career information, counseling and guidance.

(c) "Community based organization (CBO)" shall mean a private nonprofit organization which is representative of a community or of particular segments of a community and which can provide employment and training services. Such organizations may include but are not limited to Opportunities Industrialization Centers, the National Urban League, SER-jobs for Progress, Mainstream, Community Action Agencies, union-related organizations, employer-related nonprofit organizations, neighborhood organizations, private nonprofit youth serving agencies concerned with youth employment and other similar organizations.

(d) "Eligible applicant"shall mean any prime sponsor qualified under section 102 of CETA, sponsors of Native American programs qualified under section 302(c)(1) of CETA and sponsors of migrants and seasonal farmworkers programs qualified under section 303 of CETA.

(e) "In-school program" shall mean a program which provides either or both career employment experience and transition services to in-school youth.

(f) "In-school youth" shall mean a youth who: (1) Is currently enrolled full-time in and attending a secondary, trade, technical, vocational school or community college, or is scheduled to attend full time the next regularly scheduled quarter or semester of any of these schools; or (2) has not completed high school and is scheduled to attend in a school program leading into a secondary school diploma or its equivalent (sec. 343(d)).

(g)(1) "Job restructuring" shall mean the procedure which includes:

(i) Identifying the separate tasks that comprise a job or group of jobs;

(ii) Developing new position descriptions which retain some of the tasks of the original job; and

(iii) Developing a career ladder which builds upward from the new positions containing the lesser skilled tasks to regular jobs.

(2) A restructured job shall be clearly different from the original one in terms of skills, knowledges, abilities, and experience needed to perform the work (sec. 342(a)(3)(L)).

(h) "Local education agency (LEA)" shall mean a public board of education or other public authority legally constituted within a State for either administrative control over, direction of, or service to public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or a combination of such school districts or counties which are recognized in a State as an administrative agency for their public elementary or secondary schools (sec. 343 (d)).

(i) "Of this title" shall mean "of Title 29 of the Code of Federal Regulations."

(j) "Transition services" shall mean services and activities which are designed to assist youth to make the transition from school to unsubsidized jobs. These services are set forth in § 97.717(a)(1).

(k) "YETP" shall mean the Youth Employment and Training Programs.

§ 97.703 Allocation of funds.

(a) *General.* The Secretary shall publish formula allocations to eligible applicants in the FEDERAL REGISTER.

(b) *Formula allocated funds (sec. 343).* (1) The Secretary shall allocate 75 percent of the funds available to YETP to eligible applicants which are prime sponsors under section 102 of CETA.

(2) Of the funds available to YETP, the Secretary shall allocate an amount equal to 5 percent of the funds available under Title III, Part C of the Act, to Governors for programs as specified in § 97.722.

(3) The Secretary shall allocate funds to eligible applicants and Governors using the formula set out in section 343(b) of the Act.

(c) *Additional allocations.* The Secretary shall allocate funds to Indian, Native American, and migrant and seasonal farmworker eligible applicants as provided in section 343 of the Act.

(d) *Secretary's discretionary funds.* The Secretary shall use all remaining funds for programs designed to identify and test approaches for dealing with the unemployment problems of youth (secs. 343, 348).

§ 97.704 Reallocation procedures.

(a) Reallocation procedures under YETP will apply only after a grant is signed.

(b) The RA shall reallocate funds awarded to an eligible applicant if the RA determines that the eligible applicant will not be able to use the funds within a reasonable period of time as determined by the RA (sec. 354(b)).

(c) The procedures described in § 98.11(d) of this title shall apply to reallocations except that the reference in § 98.11(d) to paragraph (c) (concerning reallocation based on need) does not apply.

(d) The RA may also reallocate funds based on nonperformance. The procedures set forth in § 98.11(b) of this title shall apply to the reallocation of funds based on nonperformance.

(e) If all proposed LEA agreements or certifications to existing agreements under a grant are not signed by the eligible applicant and the LEA(s) within 60 days after the initial submission of the YETP plan to the RA for review and approval, the RA shall initiate reallocation procedures for that portion of the 22 percent of the eligible applicant's funds which were required to be covered under LEA agreements. The procedures set forth in § 98.11(d) apply to such reallocations, except that, the reference in § 98.11(d) to paragraph (c) (concerning reallocation based on need) does not apply.

GRANT PLANNING, APPLICATION, AND MODIFICATION PROCEDURES

§ 97.705 Eligible applicant planning process.

(a) *Youth plan.* Every eligible applicant which desires funds shall submit a youth plan containing the items listed in §§ 97.706 through 97.710. In developing its youth plan, the eligible applicant shall:

(1) Take into account the eligible applicant's Title I and summer program plans;

(2) Utilize the planning process and planning council, as described in § 95.13 (b) and (c) of this title, and the youth council described in paragraph (b) of this section;

(3) Afford an opportunity to community based organizations of demonstrated local effectiveness in providing employment and training activities for youth to participate in the development of the youth plan as required by paragraph (c) of this section; and

(4) Afford an opportunity to appropriate labor organizations to participate in the development of the youth plan as required by paragraph (d) of this section.

(b) *Youth council.* Each eligible applicant shall establish a youth council, (sec. 346).

(1) In consultation with the planning council, the eligible applicant shall make appointments to a youth council which include individuals who are representative of the local educational agencies, the local vocational advisory council, post-secondary education institutions, business, unions, the State employment security agency, local government and nongovernment agencies which are involved in serving youth, the local community, and the eligible applicant. In addition, youth council members shall include youths who are participants in, or eligible for YETP.

(2) The youth council may be either an entirely separate council or a subcommittee or subcouncil to the planning council, or eligible applicants may use existing youth councils created with respect to other programs

under this Act if these councils meet the requirements set forth in this section. In all cases, the youth council must report to the planning council.

(3) The youth council shall advise the sponsor in setting basic goals, policies and procedures for its YEDPA subpart 3 program, make recommendations regarding program plans, and provide for continuing analyses of needs for employment, training and related services. The youth council will also monitor all YETP programs and evaluate youth programs in the prime sponsor area for the purpose of improving the utilization and coordination of the delivery of such services. The council shall make recommendations based upon its analyses to the planning council.

(4) The youth council shall at a minimum make recommendations to the planning council with respect to the planning and review of all program activities under Title III, Part C, of the Act, and shall review the proposed agreements with local educational agencies under YETP.

(5) No member of the youth council shall cast a vote on any matter under deliberation by the youth council which has a direct bearing on services to be provided by that member (or any organization with which that member is associated).

(c) *Community-based organizations (CBO's).* (1) Each eligible applicant shall involve CBO's in the planning process as follows:

(i) CBO's of demonstrated local effectiveness in the delivery of employment and training services to youth shall actively participate in the planning process; and

(ii) Public notification of the proposed youth plan will be provided to CBO's through appropriate media.

(2) Special consideration shall be given to CBO's of local demonstrated effectiveness in the delivery of employment and training services to youth. Special consideration shall consist of the following:

(i) Thirty (30) days prior to submission of the proposed youth plan to the RA either the complete youth plan or a summary of the proposed youth plan will be submitted to such CBO's. If a summary is submitted, it shall include at a minimum:

(A) Information on the emphases of the program; and

(B) Proposed service deliverers and the services to be provided by each; and

(ii) Any comments received must be considered prior to the submission of the youth plan to the RA and written responses will be made to any substantive comments from such CBO's regarding selection of service deliverers and these comments and responses will be included when the youth plan is transmitted to the RA.

(3) Each eligible applicant shall maintain documentation relating to selection of service deliverers for a minimum of 1 year.

(4) An eligible applicant may directly perform classroom training, on-the-job training or work experience as described in § 95.33(d)(1), (2), or (4) of this title, only if, after consultation with CBO's, the eligible applicant determines that direct operation of the program will promote the purposes of this subpart (sec. 342(b)). The eligible applicant shall document the administrative and programmatic benefits of such direct operation.

(d) *Appropriate labor organizations.* Each eligible applicant shall afford appropriate labor organizations an opportunity to participate in the development of its youth plan by giving them an opportunity to comment on either the full youth plan or a summary of the youth plan which includes at least any proposed job classifications and wage rates. The plan or summary shall be sent to the appropriate labor organizations at least 30 days prior to the submission of the youth plan to the RA, and any comments received must be considered prior to the submission of the youth plan to the RA.

(e) *Selection of service deliveries.* Except for in-school programs funded under the 22 percent LEA agreements and when the eligible applicant chooses not to deliver program activities, the selection of service deliverers for program activities shall consist of the following elements:

(1) A fair and open selection process;

(2) Announcement using appropriate media methods to bring the competition to the attention of community based and other eligible profit and nonprofit organizations;

(3) Use of published criteria to evaluate applications;

(4) Written notification to all applicants of subsequent funding or written explanation of the reasons for disapproval of funding; and

(5) Special consideration to community-based organizations of demonstrated effectiveness in the delivery of employment and training services.

§ 97.706 Content and description of the grant application.

In order to receive funds, each eligible applicant shall submit a youth plan which, when approved, together with the Prime Sponsor Agreement (PSA), shall become the grant. Additions to, or variations from the PSA, if any, shall be included in the youth plan. The youth plan shall also include the documents described in §§ 97.707 through 97.710

§ 97.707 Approval request letter.

Each eligible applicant shall submit an Approval Request Letter to the RA, by a date set by the RA.

§ 97.708 Application for Federal Assistance (Standard Form 424).

The Application for Federal Assistance shall identify the amount of funds requested and provide information on the number of people expected to be served.

§ 97.709 Narrative description; program and planning forms; additional documentation.

(a) The narrative shall contain descriptions of:

(1) Objectives of the program;

(2) Local priorities;

(3) Implementation planning;

(4) Program activities and services;

(5) Management and administration;

(6) Results and benefits expected from the program;

(7) Program Planning Summary; and

(8) Budget Information Summary.

(b) The youth plan shall also include documentation which shows that:

(1) The planned expenditures for program activities will further the purpose of the program by:

(i) Developing long-term and coordinated solutions to the employment problems of youth, especially the economically disadvantaged;

(ii) Enhancing job prospects and career opportunities for youth; and

(iii) Enabling participants to secure appropriate unsubsidized employment (sec. 341);

(2) The identified performance goals in the youth plan are reasonable and can be achieved;

(3) A youth council has been established and the youth council has participated in the planning and review process for the youth plan;

(4) CBO's of demonstrated local effectiveness in the delivery of employment and training services to youth have participated in the planning and have been given special consideration as set forth in § 97.705(c);

(5) Appropriate labor organizations have participated in the development of the youth plan as required by § 97.705(d);

(6) There is a description of the procedures to be used to notify the appropriate labor organizations and the RA of any changes to job classifications of wage rates;

(7) The eligible applicant has a proposed in-school program to be operated pursuant to § 97.717;

(8) With respect to youth plans from Governors, there is adequate justification for each proposed activity as defined in § 97.722; and

(9) The eligible applicant has coordinated with local SESA offices to the maximum extent feasible.

§ 97.710 Special assurances and certifications

(a) The youth plan shall contain the following special assurances:

(1) Compliance with the Prime Sponsor Agreement;

(2) Compliance with the Youth Employment and Demonstration Projects Act of 1977 (YEDPA), other applicable CETA provisions, and the regulations in this subpart;

(3) Compliance with the Hazardous Occupations Orders issued pursuant to

the Fair Labor Standards Act and set forth at 29 CFR 570.50 et seq. with respect to the employment of youths under 18 years of age and the Child Labor Standards of 29 CFR 570.31 et seq. with respect to the employment of youths aged 14 and 15; and

(4) Assurance that local labor organizations who represent employees engaged in work similar to that proposed to be performed under this subpart are notified in writing of all wage rate and job classification changes.

§ 97.711 Youth plan, review, and approval.

(a) *Comments and publication procedures.* The procedures of § 95.15 of this title shall apply to YETP, except that, the RA shall establish a schedule for submission of the grant application which may include a request that a preliminary copy of the grant application be submitted to the regional office for review. However, the grant application cannot be executed until 30 days after submission of the plan to the appropriate organizations during which time comments can be submitted to the RA and prime sponsor.

(b) *Standards for reviewing the youth plan.* The provisions of § 95.17(a), (b)(1), (2), (3), (4), (6), (8), (9), (10), and (11) shall be followed by the RA in reviewing the youth plan. The RA shall also determine whether the youth plan meets the requirements of this subpart and that its documentation is adequate and sufficient.

(c) *Awarding the grant.* The procedures specified in §§ 95.18, 95.19, and 95.20 of this title shall apply to the awarding of grants under YETP.

§ 97.712 Modifying the grant.

(a) The procedures specified in § 95.21 of this title shall apply to the modifying of a YETP youth plan.

(b)(1) Appropriate labor organizations and the RA must be notified in writing of all wage rate and job classification changes under the youth plan at least 15 calendar days prior to implementing such changes.

(2) If the appropriate labor organization disagrees with the proposed changes in job classifications or wage rates, the dispute must be resolved in writing prior to implementing such changes.

ADMINISTRATIVE PROVISIONS

§ 97.713 Adminstrative provisions.

The administrative provisions of Part 98 (Grant Administration) of this title shall be applicable to the operation of programs under this subpart, except as otherwise indicated in this subpart.

PROGRAM OPERATIONS

§ 97.714 Eligibility for participation.

(a) an eligible applicant shall assure that every individual participating in the program meets the following criteria at the time of application and enrollment, except as provided in § 97.715 (sec. 345):

(1) Unemployed as defined in § 94.4 (ggg) or underemployed as defined in § 94.4 (fff) of this title, or in-school as defined in § 97.702(f);

(2) 16 through 21 years of age; and

(3) A member of a family with a total family income at or below 85 percent of the lower living standard income level, as defined in § 94.4 (nnn) of this title.

(b) An eligible applicant shall assure that for the purpose of participating in in-school career employment experience, the youth needs such participation in order to continue his or her education (sec. 346(c)).

(c) An eligible applicant shall assure that if, at the time of enrollment into any other program under the Act, an individual met the eligibility requirements of paragraph (a) of this section, and is still age eligible, that individual is eligible to transfer from that other program into YETP, and into YETP career employment experience if the individual also meets the requirements of paragraph (b) of this section.

(d) An eligible applicant shall assure that the citizenship and veterans provisions of § 95.32(d) and (e)(1) of this title also apply to YETP.

(e) Programs funded under this subpart shall give preference to economically disadvantaged youth. Appropriate efforts shall be made to give service to those youth who have severe handicaps in obtaining employment, including but not limited to those who lack credentials, those who require substantial basic and remedial skill development, those who are women and minorities, those who are veterans of military service, those who are offenders, those who are handicapped, those with dependents, or those who have otherwise demonstrated special needs as determined by the Secretary (sec. 354(a)).

(f) No youth may enroll in full-time employment opportunities if the eligible applicant determines that there is evidence the youth dropped out of high school in order to participate (sec. 353(f)(2)).

(g) Wards of the court and offenders 14 through 21 years of age determined to have left the family unit or who otherwise do not have access to the benefits that family income would normally be expected to provide shall be treated as a family of one and only income generated by themselves shall be used in determining income status; such a determination shall be based on the certification by an assigned probation officer, or other responsible court official that the youth has lived at home 50 percent or less of the time in the last 6 months.

§ 97.715 Eligibility for participation (extraordinary).

(a) Individuals otherwise eligible under § 97.714, who are in school, and who are 14 or 15 years old may participate in programs under YETP when the youth plan specifies a youth development strategy which provides broad career exposure for these youths (sec. 345(a)(1)(B)).

(b) Youths need not meet the income criteria described in § 97.714(a)(3), if they participate in a special component, as described in § 97.716(d) (sec. 345(a)(2)).

(c) Youths, who do not meet the income criteria defined in § 97.714(a)(3), and who are not in a special component described in § 97.716(d), may be offered services but these services are limited to:

(1) Counseling, including occupational information;

(2) Occupational, education, and training information;

(3) Placement services;

(4) Job referral information through coordinated intake systems; and/or

(5) Assistance in overcoming employment related sex-stereotyping in job development, placement, counseling and guidance.

§ 97.716 Allowable activities and services.

(a) Programs may include any type of employment and training activity authorized under Title I of the Act, except public service employment.

(b) *Job description.* A written job description shall be developed and maintained for all work experience and on the job training positions funded under this subpart to provide a basis for determining their comparability to existing jobs of other individuals similarly employed.

(c) *Child labor.* The child labor standards specified in 29 CFR 570.31 et seq. or appropriate State standards, whichever are stricter, shall apply to the employment of 14 or 15 year olds under YETP. The Hazardous Occupations Orders issued pursuant to the Fair Labor Standards Act and set forth at 29 CFR 570.50 et seq. shall apply to the employment of 16 and 17 year olds under YETP.

(d) *Special component.* An eligible applicant may design a special component using up to 10 percent of its YETP funds to serve a mixture of youth from families above and below the income level specified in § 97.714(a)(3) in order to test the desirability of serving such a mix of youth. This special component shall:

(1) Have and follow a structured experimental design;

(2) Establish and use comparison groups;

(3) Provide for followup on participants; and

(4) Provide for an end of the year report on the experimental outcomes.

(e) *Vocational exploration.* An eligible applicant may conduct a vocational exploration program for the purpose of exposing youth to the operation and types of jobs available in the private sector through observation of such jobs and instruction including, where appropriate, limited practical experience.

(1) The following provisions shall apply to all locally funded vocational exploration programs.

(i) All contracts, subgrants, or written agreements between sponsors and other parties for the operation of such programs shall at a minimum assure that:

(A) Participants in a vocational exploration program using YETP funds shall receive allowances in accordance with the provisions of § 97.718(c)(2). Wages shall not be paid to participants;

(B) Other benefits shall be paid in accordance with § 98.24(a)(2) of this title;

(C) The program has received the approval of any labor organization representing employees in the affected collective bargaining units:

(D) Youth will not be assigned to vocational exploration opportunities which are the subject of a labor dispute involving a work stoppage.

(E) A detailed curriculum has been developed; and

(F) The program shall not displace currently employed workers or prevent the hiring of new workers.

(ii) Organizations which have a contract, subgrant or written agreement with a prime sponsor may be reimbursed only for the costs incurred in the conduct of the program, provided that payments to employers organized for profit are only made for the costs of training which are over and above those normally provided by the employer.

(2) Whenever opportunities are located with a private-for-profit organization, the prime sponsor shall assure, in addition to items listed in paragraph (e)(1)(i) of this section, that youth will not be involved in work experience or any other activity that contributes, or could be expected to contribute, to additional sales or profit for the private-for-profit organization or otherwise result in the subsidization of wages for the organization.

(3) Where a nationally funded vocational exploration program operates in a prime sponsor's area, the prime sponsor shall enter into an agreement with the local representative of the program which shall include provisions dealing with arrangements for recruitment, selection, referral and certification of the youth entering the nationally funded program.

§ 97.717 In-school programs.

(a) *Activities and services.* The in-school programs shall be designed to provide for either or both of the following two classifications of services (sec. 342):

(1) *Transition services.* (i) These transition services shall be designed to prepared and assist youth to move from school to unsubsidized jobs in the labor market.

(ii) These services may include, but are not limited to:

(A) Outreach, assessment, and orientation;

(B) Counseling, including occupational information and career counseling;

(C) Activities promoting education to work transition;

(D) Provision of labor market information;

(E) Services to youth to help them obtain and retain employment;

(F) Literacy training and bilingual training;

(G) Attainment of certificates of high school equivalency;

(H) Job sampling, including vocational exploration in the public and private sector;

(I) Institutional skills training;

(J) Transportation assistance;

(K) Child care and other necessary supportive services;

(L) Job restructuring to make jobs more responsive to the objectives of this subpart, including assistance to employers in developing job ladders of new job opportunities for youth, in order to improve work relationships between employers and youth;

(M) Provision of information regarding employment and training related opportunities;

(N) Job development, direct placement, and placement assistance to secure unsubsidized employment opportunities for youth to the maximum extent feasible, and referral to employability development programs;

(O) Assistance in overcoming sex-stereotyping in job development, placement, and counseling; and

(P) Outreach and other services to increase the labor force participation rate among minorities and women.

(2) *Career employment experience.* This activity is a combination of both well supervised employment (work experience or on-the-job training) and certain transition services including, at a minimum, career information, counseling, and guidance. Any work experience or on-the-job training must include those minimum ancillary transition services. Where work experience or on-the-job training is supported under the 22 percent or more of funds serving in-school youth under agreements with local educational agencies, the ancillary transition services must also include placement services.

(b) *Agreements with local educational agencies.* (1) Eligible applicants shall use at least 22 percent of their total funds to serve in-school youth in programs designed to enhance their career opportunities and job prospects (sec. 343 (d)(1)) pursuant to written agreements between them and local educational agencies (LEA's). The programs shall be operated in accordance with the provisions of sections 343 (d)(2) and 346(c) of the Act.

(2) Agreements may be between the eligible applicant and one or more local educational agencies or a combination of LEA's represented by one LEA, (sec. 702(a)).

(3) Each agreement may be either a financial or nonfinancial agreement and, whichever is determined most appropriate by the eligible applicant and the LEA(s), shall:

(i) Provide a description of the activities and services to be provided to eligible participants;

(ii) Detail the responsibility of each party to the agreement for providing the activities and services which have been selected;

(iii) Contain provisions to assure that services and/or funds received pursuant to the agreement will not supplant State and local funds expended for the same purpose; and

(iv) Provide an assurance that the agreement has been reviewed by the youth council.

(4) Additional provisions are required in those agreements which specifically provide for career employment experience opportunities. These include:

(i) Assurances that participating youth will be provided constructive work experience, which will improve their ability to make career decisions and which will provide them with basic work skills needed for regular employment;

(ii) Assurances that job information, counseling, guidance, and placement services will be made available to participating youth and that funds provided under the agreement will be available to, and will be utilized by, the local educational agency or agencies to the extent necessary to pay the cost of school-based counselors to carry out the provisions of this in-school program;

(iii) Assurances that jobs provided under this program will be certified by the participating educational agency or institution as relevant to the educational and career goals of the participating youth;

(iv) Assurances that the eligible applicant will advise participating youth of the availability of other employment and training resources available in the local community to assist such youth in obtaining employment; and

(v) An assurance that career employment experience opportunities provided will be certified by a school-based counselor as being relevant to the career and educational program for the youth being provided those opportunities.

(5) In order to carry out the purposes of the LEA agreement, LEA's and prime sponsors, where appropriate, are encouraged to enter into subagreements, grants or contracts with post-secondary schools, with State accredited nonprofit educational institutions, State accredited profit institutions, SESA's and CBO's which have demonstrated effectiveness locally in serving youth, particularly those who are economically disadvantaged.

(6) Agreements for the use of the in-school funds under this section must be signed by the eligible applicant and local educational agencies no later than 60 days after initial submission of the YETP plan to the regional office for review and approval. This may be a new agreement or a certification that the existing agreement remains the same or that it is revised as

described in attachments to the certification. All certification and revision information shall be included as part of the YETP grant documentation. If an agreement is not reached within 60 days, the RA shall initiate the reallocation process as required by § 97.704.

§ 97.718 Participant benefits.

(a) Each participant shall be provided the benefits and working conditions as provided in § 98.24 of this title.

(b) Participants in training activities shall be paid allowances. Participants in employment shall be paid wages. Participants in activities which are a combination of employment and training shall be paid in accordance with § 95.33(d)(7) of this title.

(c) *Allowances.* (1) Participants shall be paid allowances in accordance with § 95.34 of this title.

(2) Participants in a vocational exploration program using YETP funds shall receive allowances in accordance with § 95.34 of this title except, (i) only allowances may be paid for the vocational exploration portion of combined activities and (ii) participants receiving public assistance as defined in § 94.4(ss), or whose needs or income are taken into account in determining such public assistance payments to others, may receive a stipend as an additional allowance for participation in vocational exploration in the private sector (VEP) activities: *Provided,* That the participant's total allowances (the incentive allowance plus any stipend) does not exceed the basic allowances paid to other participants. This stipend is available to participants eligible for receipt of incentive allowances to provide for the exceptional expenses incurred by these participants which might otherwise prevent the individuals from participating in a VEP activity. Wages shall not be paid to participants.

(d) *Wages.* Participants receiving wages shall be paid no less than the highest of:

(1) The wage rate set forth in section 6(a)(1) of the Fair Labor Standards Act. Fourteen- and fifteen-year olds, however, may be paid the rate set forth in section 14(b) of the Fair Labor Standards Act; or

(2) The applicable State or local minumum wage, including exceptions for the wage rates of 14- and 15-year olds.

(3) The prevailing wage for a job which is substantially the same as existing jobs of the same employer, except that, the employer may pay less than its prevailing wage, but not less than the minimum wage, if:

(i) The employer, the eligible applicant and the appropriate labor organization agree in writing to a lesser wage; or

(ii) There is job restructuring. In order to accomplish job restructuring, the eligible applicant, employer, and appropriate labor organization, shall enter into an agreement concerning the restructuring. If, after agreeing to the restructured job, the labor organization, employer, or eligible applicant disagree over the wages to be paid for the restructured job and an agreement is not reached, the eligible applicant, employer, and appropriate labor organization should resolve such dispute at the local level within 30 days. If, after these 30 days, an agreement has not been reached, they shall either agree to negotiate in good faith with the RA to resolve the disagreement or select other jobs. If negotiations with the RA do not result in resolution within 30 days, the RA shall set the wage rate; or

(iii) The employer creates new job classifications or occupations. If disputes arise regarding whether the jobs are new to the employer, the eligible applicant, appropriate labor organization, and employer should attempt to resolve the issue within 30 days after the appropriate labor organization is informed of the "new" jobs. If no agreement can be reached within that time frame, they shall either agree to negotiate in good faith with the RA to resolve the disagreement, or select other jobs. If negotiations with the RA do not result in a resolution within 30 days, the RA shall make a determination as to whether or not the job is new to the employer; or

(4) The prevailing wage determined by the Secretary under the Davis-Bacon Act (See 29 CFR parts 1, 3, 5, and 7) in the case of jobs in projects to which the provisions of the Davis-

Bacon Act, or any Federal law containing labor standards in accordance with the Davis-Bacon Act, apply. However, in the case of such projects financed under YETP and YCCIP under $5,000, the employer, eligible applicant, and appropriate labor organization may agree to pay youth participants not less than the applicable minimum wage and not more than the wage rate of the entering apprentice in the most nearly comparable apprenticeable trade, and to prescribe an appropriate ratio of journeymen to such participating youth to work on the project. If they cannot agree in 30 days, they may request a decision from the RA, or develop other jobs.

(e) Earnings received by any youth under YETP shall be disregarded in determining the eligibility of the youth's family for, and the amount of, any benefits based on need under any Federal or federally assisted programs (sec. 356).

(f) Because most jobs will be short-term and/or part-time work assignments, and are designed to enhance the employability of individuals who are new entrants who have never worked, or individuals who are new entrants who have not been working in the competitive labor market, most jobs will be at entry level. Eligible applicants, therefore, are expected to pay the minimum wage whenever feasible.

§ 97.719 Maintenance of effort (sec. 353(b)).

(a) Youth plans shall reflect the purpose of this program to provide additional resources, activities, and services over and above the current level which will have a positive impact on the employment problems of youth.

(b) Funds provided under this subpart shall be used to supplement, rather than supplant, the level of funds that would otherwise be made available from non-Federal sources for the purpose of planning and administering programs and activities within the scope of this subpart.

(c) The following provisions also apply to activities funded under this program:

(1) They will not result in the displacement of currently employed workers;

(2) They will not substitute jobs assisted under this part for existing federally assisted jobs;

(3) They will not employ any youth when any person is on layoff by the employer from the same or any substantially equivalent job in the same area;

(4) They will not be used to employ any person to fill a job opening created by laying off or terminating the employment of any regular employee, or otherwise reducing the regular work force, in anticipation of filling vacancies by hiring youth to be supported under YETP;

(5) They will not infringe upon the promotional opportunities which would otherwise be available to persons currently employed in public service not subsidized under the Act;

(6) They will not permit a job to be filled in other than an entry-level position in each promotional line until applicable personnel procedures and collective-bargaining agreements have been complied with;

(7) Where job restructuring will occur or where new classifications will be developed, they will not be done in order to negate established personnel procedures or to displace currently employed workers.

§ 97.720 Substitution for Title I programs.

Programs funded under YETP shall be supplementary to but not replace programs and activities for youth available under title I of the Act (§§ 95.13(b) (3) and 95.14(b)(3)(ii)(G)).

§ 97.721 Academic credit.

Eligible applicants shall make appropriate efforts to encourage educational agencies and postsecondary institutions to award academic credit for competencies participants gain from their participation in the program.

GOVERNORS YOUTH PROGRAM

§ 97.722 Governors youth programs.

(a) *Activities and services.* The Governor shall use the funds allocated pursuant to § 97.703(b)(2) to provide statewide youth services such as the following (sec. 343(c)):

(1) To give special emphasis to funding expanded and experimental programs in apprenticeship trades, or development of new apprenticeship arrangements, in conjunction with business, labor unions, and State apprenticeship councils;

(2) To provide funds to carry out special model employment and training programs and related services between appropriate State agencies and an eligible applicant or eligible applicants, including contractors selected by eligible applicants, with particular emphasis on experimental job training in the private sector;

(3) To provide labor market and occupational information to eligible applicants and local educational agencies without reimbursement;

(4) To foster cooperative efforts between State and local institutions which provide occupational and career guidance and counseling, as well as placement services for in-school and out-of-school youth; and

(5) To fund employment and training programs as defined in § 97.716 for eligible youth who are under the supervision of the State.

(b) *Eligibility for participation.* Individuals participating in programs using funds allocated pursuant to § 97.703(b)(2) must meet the eligibility criteria provided in § 97.714 or § 97.715 (sec. 345).

(c) *Limitation of funds.* The overall 20 percent limitation of funds used for administration as set out in § 98.12(f)(6) shall not apply to the Governor's youth plan.

(d) *Governor's youth plan.* The Governor's youth plans shall include the following information:

(1) A request for approval letter; and

(2) Application for Federal assistance (standard form 424);

(3) The narrative, which shall include the following;

(i) A discussion of any support to be given for expanded and experimental programs in apprenticeable trades;

(ii) A description of efforts to provide employment and training opportunities for youth under the supervision of the State;

(iii) A description of the efforts the State will undertake in the development, analysis and dissemination of appropriate labor market information as it relates to youth;

(iv) A description of efforts to coordinate existing State services or institutions and those of the eligible applicant(s);

(v) A description of any experimental, model or demonstration programs to be operated by the State and, any plans to assist eligible applicants in the development or operation of such programs;

(vi) A description of expected results and benefits to be derived from specific program activities under the grant; and

(4) Youth planning summary and youth budget information summary:

(i) The youth planning summary requires a quantitative statement of planned enrollment levels, the participants to be served by each program activity, and planned outcomes for program participants. It shall also include an identification of the target groups within the youth population and the number of individuals in each to be served.

(ii) The youth budget information summary shall include a quantitative statement of yearly planned expenditures by cost category, planned quarterly obligations, and planned quarterly expenditures by program activity.

(e) *Special assurance and certifications.* The Governor's youth plan shall assure:

(1) Compliance with the Governor's agreement;

(2) Compliance with the Youth Employment and Demonstration Project Act of 1977 (YEDPA), other applicable CETA provisions, and the regulations in this subpart;

(3) Compliance with the provisions of section 343(c) of the Act; and

(4) Compliance with the hazardous occupations orders issued pursuant to 29 CFR 570.50 et seq. with respect to the employment of youths under 18 years of age and the child labor standards of 29 CFR 570.13 et seq. with respect to the employment of youth aged 14 to 15.

(f) *Procedures for comment, modification and approval of Governor's* *youth plan.* (1) In developing the Governor's youth plan, the Governor shall establish a youth council as described in § 97.705(b) which shall report to the State Manpower Services Council (SMSC) described in § 95.13(d) of this title. The responsibilities of these councils shall be those described in § 95.13(d)(4) of this title. The references to local agencies in § 97.705(b)(1) shall mean representatives of State agencies who represent statewide concerns.

(2) In submitting the Governor's youth plan, the procedures specified in § 95.52(a) (c) and (d) of this title shall be followed except the preapplication procedures in § 95.52(a)(2) and the preapplication provisions in §§ 95.11 and 95.15(d), which are referenced in § 95.52 do not apply.

(3) Approval procedures to be followed for the Governor's youth plan are as specified in § 95.53 of this title, except that the provision in § 95.17(b)(7), referenced in § 95.53, does not apply.

(4) The modification procedures specified in § 95.54 of this title shall be used to modify Governor's grants under YETP.

Subpart I—[Reserved]

Subpart J—Youth Community Conservation and Improvement Projects for Section 303 Grantees

AUTHORITY: Sec. 702(a) of the Comprehensive Employment and Training Act of 1973, as amended, unless otherwise noted.

SOURCE: 43 FR 2151, Jan. 13, 1978, unless otherwise noted.

GENERAL

§ 97.900 Scope and purpose.

(a) This subpart contains the Department of Labor's regulations for the Youth Community Conservation and Improvement Projects (YCCIP) authorized by Title III, Part C, Subpart 2 of the Act for eligible youths who are members of migrant and seasonal farmworker families. This subpart does not contain all regulations under the Act necessary to the operation of a YCCIP component by a Section 303 grantee and is, therefore, designed to be used in conjunction with Subpart G—Youth Community Conservation and Improvement Projects (YCCIP). All provisions of the regulations of Subpart G of this part shall be incorporated except where the provisions of this subpart conflict with the provisions of the regulations of Subpart G. All provisions of Subpart C of this part also apply to YCCIP operated by section 303 grantees, except to the extent that they may conflict with this subpart.

(b) When the regulations of this subpart conflict with other regulations promulgated under the Act in 29 CFR Parts 94 through 99, the regulations contained in this subpart shall prevail. Part 98 of this title does not apply to programs under this subpart, except where noted.

(c) The Department of Labor will provide allocations of YCCIP funds to those section 303 grantees selected to receive these funds for fiscal year 1978, or subsequent years, if funds are made available by the Congress, as a result of a special competitive process. Eligible section 303 applicants are expected to submit quality project applications selected through an objective process at the local level as described in section 335 of the Act. The Department will review these YCCIP project applications and will fund those projects which best fulfill the requirements of the program.

(d) Because of the special nature of problems faced by eligible youths who are members of migrant and seasonal farmworker families, programs developed and implemented under section 333(b) of the Act shall be administered by the Employment and Training Administration (ETA), Office of National Programs (ONP), Director, Office of Farmworker Programs (OFP) at the national level.

(e) Statutory authority for regulations in this subpart may be found in sections 303, 333(b), 354(b) and 702(a) of the Act, as amended, as well as in other sections of the Act.

(f) The regulations in this part govern programs funded under the Comprehensive Employment and Training Act of 1973 prior to amendment and reauthorization in 1978

(Pub. L. 95-524, 92 Stat. 1909), and are thus in many particulars superseded by regulations implementing the reauthorized Comprehensive Employment and Training Act, Pub. Law 95-524, 92 Stat. 1909, which are being codified at 20 CFR Part 675 *et seq.* Any questions regarding the applicability of any particular regulation in Title 29 should be addressed to the Regional Administrator for the Employment and Training Administration.

[43 FR 2151, Jan. 13, 1978, as amended at 44 FR 37911, June 29, 1979]

§ 97.901 Definitions.

Definitions for abbreviations and major terms used in this subpart are contained in § 94.4, of this title, and §§ 97.602 and 97.203 of this part.

§ 97.902 Eligibility for funds.

Only section 303 grantees funded under § 97.205 or paragraph (c)(5) of § 97.233 are eligible to compete for YCCIP funds.

§ 97.903 Allocation of funds.

(a) Two percent of the funds available for Youth Community Conservation and Improvement Projects (YCCIP) shall be made available for projects for eligible migrant and seasonal farmworker youths.

(b) Allocations shall be provided to those section 303 grantees selected as a result of a special competitive process for YCCIP funds. Section 303 grantees shall be allocated no more than $1,000,000 and no less than $150,000 for each YCCIP grant. In exceptional circumstances the secretary may allocate more than $1,000,000 for a single YCCIP grant.

§ 97.904 Award of funds.

The Director, Office of Farmworker Programs (OFP), shall award to selected section 303 grant applicants, funds in accordance with the provisions of § 97.218 except for paragraph (b)(3) of § 97.218.

§ 97.905 Reallocation procedures.

(a) The Director, Office of Farmworker Programs (OFP), may reallocate any amount of any allocation made to a section 303 grantee under subpart 2 of part C of title III of the Act to the extent that a grantee will not be able to use all or any part of YCCIP funds granted. Any reallocation of YCCIP funds shall be in accordance with the procedure established in section 354(b) of the Act.

(b) Priority shall be given to reallocating within the same State consistent with providing the most effective service to the maximum number of youths who are members of migrant and seasonal farmworker families.

GRANT PLANNING, APPLICATION AND MODIFICATION PROCEDURES

§ 97.906 Eligible applicant planning process.

Each eligible section 303 grant applicant which desires YCCIP funds shall submit a preapplication pursuant to § 97.907 and a plan pursuant to § 97.1006 and §§ 97.616 through 97.619.

§ 97.907 Preapplication for Federal assistance (Standard Form 424).

An eligible section 303 grant applicant interested in applying for YCCIP funds shall submit a Standard Form 424 to the appropriate Regional Administrator; Director, OFP; and to areawide A-95 clearinghouses by a date to be announced by the Director, OFP, and published in the FEDERAL REGISTER.

§ 97.908 Project application content.

In addition to information required in § 97.611, except paragraph (f)(1), project applications must include:

(a) Direct and indirect program costs as defined in paragraphs (a) (1) and (2) of § 97.255, and

(b) Administrative costs as defined in paragraphs (e)(6) of § 97.255.

§ 97.909 Project prioritization.

(a) Each section 303 eligible applicant shall rank, in terms of their relative priority, approvable project applications.

(b) Eligible applicants shall document the rationale used for ranking the approvable project applications.

§ 97.910 Submission of YCCIP grant application.

(a) Each eligible applicant must submit three copies of the proposed YCCIP plan by a date to be set by the Director, Office of Farmworker Programs, and published in the FEDERAL REGISTER, to the address listed below:

U.S. Department of Labor, Employment and Training Administration, 601 D Street NW., Room 7122, Washington, D.C. 20213. Attn: Director, Office of Farmworker Programs (OFP).

(b) Two copies of the proposed YCCIP plan shall also be submitted directly to the appropriate Regional Administrator for Employment and Training at the same time the three copies are submitted to the above address and labeled: YCCIP Plan for CETA 303 Farmworker Program.

§ 97.911 Special assurances and certifications.

In addition to the assurances and certifications noted in § 97.615, the proposed YCCIP plan must also comply with the assurances and certifications required in paragraph (b)(4) of § 97.213.

§ 97.912 Review of YCCIP grant applications.

Proposed YCCIP plans submitted by eligible applicants shall be reviewed and evaluated by the Director, Office of Farmworker Programs, to determine those judged to be most qualified to receive YCCIP grants.

(a) The Director, OFP, shall review the documentation described in § 97.611 and § 97.614 to determine whether a proposed YCCIP plan meets the requirements of the Act, regulations of this subpart and other applicable laws.

(b) The Director, OFP, shall use the factors and assurances set forth in paragraphs (b) and (c) of § 97.613 and review the criteria for ranking projects. In addition the provisions of paragraphs (a), (b)(1), (2), (3), (4), (5), (6), (9), (10), and (1) of § 95.17 and paragraph (c)(6)(i) of § 97.255 shall be followed by the Director, OFP, in reviewing YCCIP proposals.

§ 97.913 Notification of selection.

(a) Potential YCCIP grantees selected as a result of the procedures set forth in § 97.912 shall be so notified by the Director, OFP. The notification shall invite each potential YCCIP grantee to negotiate the final terms and conditions of the grant, shall establish the time and place of the negotiation, and shall indicate the State or area to be covered by the grant.

(b) A section 303 grantee whose proposed YCCIP plan is not selected by the Secretary to receive YCCIP funds shall be notified in writing and shall be provided the names and addresses of potential YCCIP grantees.

§ 97.914 Negotiation of a final grant.

The procedures detailed in § 97.217 of this part shall apply.

§ 97.915 Grant award.

The approval of the proposed YCCIP plan will be in accordance with § 97.218 of this part.

§ 97.916 Modifying the grant.

Any modification to the YCCIP plan will be in accordance with provisions of § 97.220 of this part.

ADMINISTRATIVE PROVISIONS

§ 97.917 Administrative provisions.

Eligible section 303 grant applicants shall comply with the administrative provisions of § 97.250 of this part in operating programs pursuant to this subpart.

PROGRAM OPERATIONS

§ 97.918 Eligibility for participation.

In addition to the criteria detailed in § 97.623, participating youths must also meet the criteria for farmworker or dependent of a farmworker detailed in paragraphs (a) (1) and (2) of § 97.232.

§ 97.919 Participant benefits.

(a) Participants shall be paid wages as described in paragraph (c) of § 97.718 of this part, except that the Director, OFP, will negotiate any wage disputes as described in paragraphs (c) (3) (ii), (iii), and (4) of § 97.718.

(b) Each participant shall be provided the benefits and working conditions as provided in § 97.259 of this part.

§ 97.920 Substitution for Title I or Title III, section 303 programs.

Programs funded under YCCIP shall be supplementary to, and shall not replace programs and activities for youth available under title I or title III, section 303 of the Act.

§ 97.921 Limitation on use of funds.

Because section 335 of the Act requires that this program be labor intensive, no less than 65 percent of funds available to an eligible applicant shall be used for wage and fringe benefits for participants. Section 303 YCCIP projects will comply with paragraph (f)(6)(1) of § 97.255. Administrative costs shall not exceed 20 percent of planned costs for the entire YCCIP grant unless such additional costs have been approved in writing by the Secretary.

§ 97.922 Complaint procedure.

An eligible applicant shall have the right to appeal a decision not to fund a YCCIP proposal in accordance with procedures described in § 97.292.

Subpart K—Youth Employment and Training Programs for Section 303 Grantees

AUTHORITY: Sec. 702(a) of the Comprehensive Employment and Training Act of 1973, as amended, unless otherwise noted.

SOURCE: 43 FR 2151, Jan. 13, 1978, unless otherwise noted.

GENERAL

§ 97.1000 Scope and purpose.

(a) This subpart contains the Department of Labor's regulations for the Youth Employment and Training Programs (YETP) authorized by subpart 3 of part C of title III of the Act for eligible youths who are members of migrant and seasonal farmworker families. This subpart does not contain all regulations under the Act necessary to the operation of a YETP component by a section 303 grantee and is, therefore, designed to be used in conjunction with subpart H—Youth Employment and Training Programs. All provisions of the regulations of Subpart H of this part shall be incorporated except where the provisions of this subpart conflict with the provisions of Subpart H. All provisions of Subpart C of this part also apply to YETP operated by section 303 grantees, except to the extent that they may conflict with this subpart.

(b) When the regulations of this subpart conflict with other regulations promulgated under the Act, in 29 CFR parts 94 through 99, the regulations contained in this subpart shall prevail. Part 98 of this title does not apply to programs under this subpart, except where noted.

(c) Because of the special nature of problems faced by eligible youths who are members of migrant and seasonal farmworker families, programs developed and implemented under section 343(a)(4) of the Act shall be administered by the Employment and Training Administration (ETA), Office of National Programs (ONP), Director, Office of Farmworker Programs (OFP) at the national level.

(d) Statutory authority for regulations in this subpart may be found in sections 303, 343(a)(4), 354(b) and 702(a) of the Act, as amended, as well as in other parts of the Act.

(e) The regulations in this part govern programs funded under the Comprehensive Employment and Training Act of 1973 prior to amendment and reauthorization in 1978 (Pub. L. 95-524, 92 Stat. 1909), and are thus in many particulars superseded by regulations implementing the reauthorized Comprehensive Employment and Training Act, Pub. Law 95-524, 92 Stat. 1909, which are being codified at 20 CFR Parts 675 *et seq.* Any questions regarding the applicability of any particular regulation in Title 29 should be addressed to the Regional Administrator for the Employment and Training Administration.

[43 FR 2151, Jan. 13, 1978, as amended at 44 FR 37911, June 29, 1979]

§ 97.1001 Definitions.

Definitions for abbreviations and major terms used in this subpart are contained in § 94.4 of this title and §§ 97.702 and 97.203 of this part.

§ 97.1002 Eligibility for funds.

Only section 303 grantees funded under § 97.205 or paragraph (c)(5) of § 97.233 are eligible to compete for YETP funds.

§ 97.1003 Allocation of funds.

(a) Two percent of funds available for part C of title III of the Act shall be made available (after deducting the amount available under section 333(b) of the Act) for programs for eligible youths who are members of migrant and seasonal farmworker families.

(b) Allocations shall be provided to those section 303 grantees selected as a result of a special competitive process for YETP funds. Section 303 grantees shall be allocated no more than $1,000,000 and no less than $150,000 for each YETP grant. In exceptional circumstances the Secretary may allocate more than $1,000,000 for a single YETP grant.

§ 97.1004 Award of funds.

The Director, Office of Farmworker Programs, shall award to selected section 303 grant applicants funds in accordance with the provisions of § 97.218 except for paragraph (b)(3).

§ 97.1005 Reallocation procedures.

(a) The Director, Office of Farmworker Programs, may reallocate any amount of any allocation made to a section 303 grantee under subpart 3 of part C of title III of the Act to the extent that a grantee will not be able to use all or any part of YETP funds granted. Any reallocation of YETP funds shall be in accordance with the procedure established in section 354(b) of the Act.

(b) Priority shall be given to reallocating within the same State consistent with providing the most effective service to the maximum number of youths who are members of migrant and seasonal farmworker families.

GRANT PLANNING, APPLICATION AND MODIFICATION PROCEDURES

§ 97.1006 Eligible applicant planning process.

(a) *Youth plan.* In developing a plan for activities under part C of title III, an eligible section 303 applicant shall:

(1) Take into account the eligible section 303 grantee's section 303 program and, where applicable, title I and title III summer youth employment programs.

(2) Use the planning process and board or advisory council referenced in paragraph (b)(3)(i)(C)(*1*) of § 97.213 of this part, including participation of youths who are members of migrant and seasonal farmworker families as described in paragraph (b) of this section.

(b) *Youth participation in planning.* Where boards or advisory councils of private, nonprofit organizations have youth participation or youth advisory groups, the youth representatives shall, as a minimum, make recommendations to the board or council with respect to the planning and review of all activities proposed under part C of title III of the Act. Where the eligible applicant is a prime sponsor under section 102 of the Act, youth participation in planning shall be in accordance with paragraph (b) of § 97.705.

(c) *Community Based Organizations.* (1) The section 303 grantee will submit the proposed plan and responses from community based organizations in the section 303 grantee's service area which have reviewed the plan to the Director, Office of Farmworker Programs.

(2) An eligible section 303 grantee may directly perform program activities described in § 97.233 of this part.

(d) *Application.* Each eligible section 303 grant applicant which desires funds for YETP shall submit a preapplication pursuant to § 97.1007 and a youth plan pursuant to paragraphs (a) and (b) (1), (2), (5), (6), (8), and (9) of § 97.709 and § 97.1009. The eligible applicant's YETP plan shall use the planning process and the board or advisory council described in paragraphs (b)(3)(i)(B) (*1*), (*2*), and (*3*) and (b)(3)(i)(C) (*1*), (*2*), (*3*), (*4*), (*5*), (*6*), (*8*), (*9*), and (*10*) of § 97.213 and paragraph (b) of this section. The compliant procedure for program participants shall be as described in § 97.291.

§ 97.1007 Preapplication for Federal assistance (Standard Form 424).

An eligible section 303 grant applicant interested in applying for YETP funds shall submit a Standard Form 424 to the appropriate Regional Administrator; to Director, OFP, and to areawide A-95 clearinghouses by a date to be set by the Director, OFP, and published in the FEDERAL REGISTER.

§ 97.1008 Submission of YETP grant application.

(a) Each applicant must submit three copies of the proposed YETP plan by a date to be set by the Director, Office of Farmworker Programs, and published in the FEDERAL REGISTER, to the address listed below:

U.S. Department of Labor, Employment and Training Administration, 601 D Street, NW., Room 7122, Washington, D.C. 20213. Attn: Director, Office of Farmworker Programs.

(b) Two copies of the proposed YETP plan shall be submitted to the appropriate Regional Administrator at the time the three copies are submitted to the Director, Office of Farmworker Programs, and label: YETP Plan for CETA 303 Farmworker Program.

§ 97.1009 Narrative description, program and planning forms, additional documentation.

Section 303 applicants will not be required to include agreements described in paragraph (b) of § 97.717 in the narrative description if no inschool activity is planned or if no local educational agency agreement has been completed.

§ 97.1010 Special assurances and certifications.

In addition to requirements of § 97.710, the youth plan shall comply with assurances and certifications required in paragraph (b)(4) of § 97.213.

§ 97.1011 Youth plan.

The procedures of paragraphs (a) and (b) of § 97.711 shall apply except that the YETP plan will be submitted to the Director, Office of Farmworker Programs.

§ 97.1012 Review of YETP grant applications.

(a) Proposed YETP plans submitted by eligible applicants shall be reviewed and evaluated by the Director, Office of Farmworker Programs (OFP), to determine those judged to be most qualified to receive YETP grants.

(b) The Director, OFP, shall review this documentation described in paragraphs (a) and (b) of § 97.711 to determine whether the proposed YETP plan meets requirements of the Act, regulations of this subpart and other applicable laws. In addition, the provisions of paragraphs (a) and (b) (1), (2), (3), (4), (5), (6), (9), (10), and (11) of § 95.17 and paragraph (f)(6)(i) of § 97.255 shall be followed by the Director in reviewing YETP proposals.

§ 97.1013 Notification of selection.

Potential YETP grantees selected as a result of procedures set forth in § 97.1012 shall be notified in the manner described in § 97.913.

§ 97.1014 Negotiation of a final grant.

The procedures detailed in § 97.217 of this part shall apply.

§ 97.1015 Grant award.

The approval of the proposed YETP plan will be in accordance with provisions of § 97.218 of this part.

§ 97.1016 Modifying the grant.

Any modification of the YETP plan will be in accordance with provisions of § 97.220 of this part.

ADMINISTRATIVE PROVISIONS

§ 97.1017 Administrative procedures.

Eligible section 303 grantee applicants shall comply with the administrative procedures of § 97.230 in operating YETP programs.

PROGRAM OPERATIONS

§ 97.1018 Eligibility for participation.

In addition to criteria established in § 97.714, participating youths must also meet criteria for farmworker or dependent of a farmworker established in paragraphs (a) (1) and (2) of § 97.232.

§ 97.1019 Eligibility for participation (extraordinary).

Youths who are in school and are 14 or 15 years old may participate in YETP, provided they meet other conditions described in § 97.1018.

§ 97.1020 Allowable activities and services.

(a) Programs may include any type of employment and training activity described in § 97.233 of this part. For the YETP component, grantees are encouraged but not required to conduct OJT training on a "hire first, train later" basis.

(b) Each participant in on-the-job training, work experience or career employment experience shall be assured of the general benefits and working conditions for program participants provided in § 97.259.

(c) Eligible section 303 applicants shall not design a special component using up to 10 percent of YETP funds to serve a mixture of youth from families above and below the income level specified in paragraph (a)(3) of § 97.714. All YETP funds going to section 303 grantees will be used for youths who are members of migrant and seasonal farmworker families.

§ 97.1021 In-school programs.

Eligible section 303 grant applicants are not required by the Act to set aside any specific amount of YETP funds to serve in-school youth. However, section 303 grantees serving in-school youth in programs designed to enhance career opportunities and job prospects are encouraged to seek written agreements with local education agencies.

§ 97.1022 Payments to participants.

(a) *Allowances.* Participants shall be paid allowances in accordance with the criteria and process in § 97.256.

(b) *Wages.* Participants shall be paid wages as described in paragraph (c) of § 97.718, except that the Director, OFP, will resolve wage disputes described in paragraphs (c)(3) (ii), (iii), and (4) of § 97.718.

§ 97.1023 Substitution for Title I or Title III, section 303 programs.

Programs funded under YETP shall be supplementary to and shall not replace programs and activities for youths available under title I or title III, section 303 of the Act.

§ 97.1024 Complaint procedure.

Section 303 grant applicants shall have the right to appeal decision not to fund YETP programs in accordance with procedures described in § 97.292.

Subpart L—Youth Community Conservation and Improvement Projects for Indian and Native American Youth

AUTHORITY: Sec. 702(a) of the Comprehensive Employment and Training Act, as amended, 29 U.S.C. 801 et seq.

SOURCE: 43 FR 47937, Oct. 17, 1978, unless otherwise noted.

GENERAL

§ 97.1101 Scope and purpose.

(a) This subpart contains the Department of Labor's regulations governing the establishment and operation of Indian and native American youth community conservation and improvement projects (YCCIP) under title III, part C, subpart 2, of the Act. The regulations in Subpart B of this part also apply to Indian and native American YCCIP programs except to the extent noted in this subpart.

(b) To the extent the regulations set forth in this subpart conflict with other regulations promulgated under the Act in 29 CFR Parts 94 through 99, the requirements contained in this subpart shall apply.

(c) This program seeks to provide youth experiencing severe difficulties in obtaining employment with well-supervised work in projects that produce tangible benefits to the community. It is extremely important to appoint competent supervisors who can instill good work habits in the youth. The program emphasizes the development and provision of jobs. Any training must be directly related to the development of specific skills needed for a job. The program must be flexible enough to accommodate in-school youth, and they should be encouraged to stay in school and graduate. Participants who have not graduated from high school should be encouraged to finish their education.

(d) The regulations in this part govern programs funded under the Comprehensive Employment and Training Act of 1973 prior to amendment and reauthorization in 1978 (Pub. L. 95-524, 92 Stat. 1909), and are thus in many particulars superseded by regulations implementing the reauthorized Comprehensive Employment and Training Act, Pub. Law 95-524, 92 Stat. 1909, which are codified at 20 CFR Parts 675 *et seq.* Any questions regarding the applicability of any particular regulation in Title 29 should be addressed to the Regional Administrator for the Employment and Training Administration.[1]

[43 FR 47937, Oct. 17, 1978, as amended at 44 FR 37911, June 29, 1979]

§ 97.1102 Definitions.

Definitions for abbreviations and major terms used in this subpart are contained in § 94.4 of this title and § 97.103. The following definitions are specific to this subpart:

(a) "Low-income housing" shall mean dwellings of individuals whose income is at or below 125 percent of the poverty level which are privately owned and owner occupied, privately owned by a nonprofit organization, or units of public housing. For weatherization or winterization projects funded and approved by the Federal Energy Administration or the Community Services Administration, "low-income housing" shall include privately owned rental housing.

(b) "YCCIP" shall mean the youth community conservation and improvements projects.

(c) "Project" shall mean a prime sponsor's overall YCCIP program.

§ 97.1103 Eligibility for and allocation of funds.

(a) Only section 302(c)(1) prime sponsors who are funded under § 97.104 are eligible for YCCIP funds.

(b) *Allocation of funds.* (1) Two percent of the funds available for YCCIP projects shall be made available for eligible Indian and native American youth.

(2) Allocations shall be provided to section 302(c)(1) grantees selected for fiscal year 1978 based on the proportion of 16- to 19-year-old youth in the prime sponsor's population. In subsequent fiscal years funds shall be allocated on the basis of the relative number of unemployed persons within each prime sponsor's area as compared to all areas eligible for funds in this program.

§ 97.1104 Reallocation of funds.

The Director, DINAP, may reallocate any amount of any allocation made to a section 302(c)(1) grantee under subpart 2 of part C of title III of the Act in accordance with § 97.160.

GRANT PLANNING, APPLICATION, AND MODIFICATION PROCEDURES

§ 97.1105 Prime sponsor planning procedures and submission of applications.

(a) *Planning.* When planning their YCCIP program, prime sponsors must utilize the planning process described in § 97.1205 (a) and (b).

(b) *Submission of application.* Six copies of an application for a YCCIP program shall be submitted annually by a prime sponsor to the Director, DINAP who will inform them of the due date. Such dates may vary from year to year depending on when YCCIP funds are made available to the Department of Labor.

§ 97.1106 Project application content.

(a) Each application will have the following forms: Grant signature sheet; YCCIP narrative; YCCIP program planning summary; YCCIP budget information summary.

(b) Content of YCCIP narrative:

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[1] Paragraph (d) was inadvertently added to § 97.1100 at 44 FR 37911, June 29, 1979.

(1) The types of jobs;

(2) The need for the types of work to be performed;

(3) The full-time supervisor to youth ratio;

(4) Qualifications of supervisors;

(5) Benefits participants are expected to derive;

(6) Principal job titles, brief job descriptions, and hourly wages;

(7) Target groups to be served;

(8) Recruiting methods;

(9) Supportive services to be provided;

(10) The following costs:

(i) Participant wages and benefits;

(ii) Worksite supervisors wages and benefits;

(iii) Job-related training;

(iv) Materials, supplies, and equipment used by participants on the job;

(v) Supportive services for participants; and

(11) Assurances of compliance with the Act and the regulations of 29 CFR 97.1101-97.1117 and compliance with the hazardous occupations orders issued pursuant to the Fair Labor Standards Act and set forth at 29 CFR 570.50 et seq. with respect to the employment of youth under 18 years of age.

§ 97.1107 Project application approval.

(a) To be approved a proposed project must:

(1) Provide benefits to the community;

(2) Provide benefits to participants in terms of work habits, skills, and attainment of academic credit where applicable;

(3) Assure an adequate level of supervision, taking into account the complexity of the jobs to be created; and

(4) Describe qualifications of supervisors in terms of skills and experience.

(b) Prime sponsors must assure that the project will result in an increase in employment opportunities over those which would otherwise be available, and that:

(1) It will not result in the displacement of currently employed workers;

(2) It will not substitute jobs assisted under this subpart for existing federally assisted jobs;

(3) It will not employ any youth when any other person is on layoff by the employer from the same or any substantially equivalent job in the same area;

(4) It will not employ any person to fill a job opening created by laying off or terminating the employment of any regular employee, or otherwise reducing the the regular work force, in anticipation of filling vacancies by hiring youth to be supported under YCCIP;

(5) It will not infringe upon the promotional opportunities which would otherwise be available to persons currently employed in public service not subsidized under the Act;

(6) It will not permit a job to be filled in other than an entry-level position in each promotional line until applicable personnel procedures and collective bargaining agreements have been complied with; and

(7) Job restructuring will not occur and new classifications will not be developed solely to negate established personnel procedures or to displace currently employed workers.

§ 97.1108 Modifications.

An approved program may be modified after consultation with and the approval of the Director, DINAP, notwithstanding the provisions of § 97.121.

PROGRAM OPERATIONS

§ 97.1109 Eligibility for participation.

(a) In order to participate, an individual must:

(1) Be an Indian or native American youth 16 through 19 years of age, inclusive, at the time of enrollment; and

(2) Be unemployed.

(b) If at the time of enrollment into any other program under the Act, a youth who is currently 16 through 19 years of age, was unemployed, that individual may be transferred into this program.

(c) Appropriate efforts shall be made to serve those youth who have severe difficulties in obtaining employment (section 354(a)).

(d) The citizenship and veterans provisions of § 95.32 (d) and (e)(1) of this title shall apply to YCCIP programs (section 332(c)).

§ 97.1110 Acceptable project activities.

(a) Projects shall insure that participants do constructive work in terms of individual and community benefits. Such employment may include, but is not limited to, the rehabilitation, construction, or improvement of public facilities (including accessing them for the handicapped by removing architectural barriers); neighborhood improvements; weatherization and basic repairs to low-income housing as defined in § 97.1102; energy conservation including solar energy projects; and conservation maintenance, or restoration of natural resources of publicly held lands.

(b) Training provided must be directly related to a participant's job.

(c) Where in-school youth are served, they must be in a combination work and education program.

(d) Public service employment (PSE) projects are not permitted.

(e) Projects of such little value as picking up trash, debris, or weeds, etc. are prohibited.

§ 97.1111 Participant benefits.

(a) Participants shall be paid wages and allowances as described in § 97.1212(c) (section 352).

(b) Each participant shall be provided the benefits and working conditions as provided in § 97.136.

§ 97.1112 Academic credit.

Prime sponsors shall make appropriate efforts to encourage educational agencies to award academic credit for the competencies participants gain from their employment.

§ 97.1113 Supervisory personnel.

(a) Each project must have an adequate number of skilled supervisors. There must be at least the equivalent of one full-time supervisor to every 12 youth. Supervisors must have the skills needed to carry out the project and must be able to instruct participants in those skills.

(b) The hiring of supervisory personnel for projects shall not impede the promotional rights of existing employees.

§ 97.1114 Materials, equipment, and supplies.

Eligible applicants are encouraged to make use of resources from CETA, BIA, Community Services Administration and Federal Energy Administration to provide or supplement materials, equipment, supplies, etc.

§ 97.1115 Earnings disregard.

Earnings received by any youth under this subpart shall be disregarded in determining the eligibility of the youth's family for, and the amount of, any benefits based on need under any Federal or federally assisted program.

§ 97.1116 Limitation on use of funds.

No less than 75 percent of the funds awarded to each prime sponsor may be used for participants' wages and fringe benefits. The remaining 25 percent may be divided at the prime sponsor's discretion between administration, supervision, services, training, and the cost of materials, equipment, and supplies, except that in no case may more than 20 percent be spent on administrative costs.

§ 97.1117 Work limitation.

No youth shall be employed for more than 12 months in work financed under this subpart, except as allowed in writing by the Director, DINAP (sec. 338).

Subpart M—Youth Employment and Training Programs for Indian and Native American Youth

AUTHORITY: Sec. 702 of the Comprehensive Employment and Training Act of 1973, as amended, 29 U.S.C. 801 et seq.

SOURCE: 43 FR 47939, Oct. 17, 1978, unless otherwise noted.

GENERAL

§ 97.1201 Scope and purpose.

(a) This subpart contains the regulations for the Indian and Native American employment and training program (YETP) which is authorized by title III, part C, subpart 3 of the Act. These regulations also implement, with respect to YETP, the administrative provisions found in sections 341 through

347 of the Act. The regulations in subpart B of this part also apply to YETP programs except as indicated in this subpart. To the extent the regulations set forth in this subpart conflict with other regulations issued under the Act in 29 CFR parts 94 through 99, the regulations contained in this subpart shall prevail (sec. 357).

(b) The purpose of this program is to enhance the job prospects and career opportunities of Indian and Native American youth to enable them to secure unsubsidized employment in the private and public sectors of the economy. It is not the purpose of this program to provide make-work activities, but rather to provide youth with the opportunities to learn and earn, which will lead to meaningful employment opportunities after they have completed the program.

(c) In order to achieve the highest quality of program services, coordination with existing services for youth is essential. These services include: Activities funded under other parts of CETA; employment and educational services provided by local educational agencies; services offered by State Employment security agencies; programs funded through other sources such as community based organizations; and employment and educational activities of business, labor, and nonprofit institutions in the community.

(d) The regulations in this part govern programs funded under the Comprehensive Employment and Training Act of 1973 prior to amendment and reauthorization in 1978 (Pub. L. 95-524, 92 Stat. 1909), and are thus in many particulars superseded by regulations implementing the reauthorized Comprehensive Employment and Training Act, Pub. Law 95-524, 92 Stat. 1909, which are codified at 20 CFR Parts 675 *et seq.* Any questions regarding the applicability of any particular regulation in Title 29 should be addressed to the Regional Administrator for the Employment and Training Administration.[1]

[43 FR 47939, Oct. 17, 1978, as amended at 44 FR 37911, June 29, 1979]

§ 97.1202 Definitions.

Definitions for abbreviations and major terms used in this subpart are contained in § 94.4 of this title and § 97.103. Special definitions applicable to terms found in this subpart are as follows:

(a) "Career employment experience" shall mean a program activity for in-school youth which is a combination of well supervised employment (either work experience or on-the-job training) supported under YETP and certain transition services including at a minimum career information, counseling, and guidance.

(b) "In-school program" shall mean a program which provides either or both career employment experience and transition services to in-school youth.

(c) "In-school youth" shall mean a youth who:

(1) Is currently enrolled full-time in and attending a secondary, trade, technical, vocational school, or community college; or is scheduled to attend full-time the next regularly scheduled quarter or semester of any of these schools; or

(2) Has not completed high school and is scheduled to attend a school program leading to a secondary school diploma or its equivalent (343(d)).

(d) "Local Educational Agency (LEA)" shall mean State, county, Bureau of Indian Affairs, tribal or reservation run agencies, or any other nonprofit agency selected by the prime sponsor.

(e) "Of this Title" shall mean "of Title 29 of the Code of Federal Regulations."

(f) "Transition services" shall mean services and activities which are designed to assist youth to make the transition from school to unsubsidized jobs. These services are set forth in § 97.1211(a)(1).

(g) "YETP" shall mean the youth employment and training program.

(h) "Project" shall mean a prime sponsor's overall YETP program.

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[1] Paragraph (d) was inadvertently added to § 97.1200 at 44 FR 39711, June 29, 1979.

§ 97.1203 Eligibility for and allocation of funds.

Eligibility for and allocation of funds shall be as described in § 97.1103.

§ 97.1204 Reallocation of funds.

Funds may be reallocated as described in § 97.1104.

GRANT PLANNING, APPLICATION, AND MODIFICATION PROCEDURES

§ 97.1205 Prime sponsor planning process and submission of applications.

(a) Prime sponsors must plan their youth programs taking into account their plans for youth in all of their CETA programs and in consultation with their regular CETA planning councils and the youth councils described in paragraph (b) of this section.

(b) *Youth council.* Each prime sponsor whose combined YCCIP and YETP allocations exceed $100,000 shall establish a youth council (sec. 346), as provided in paragraph (b)(2) of this section.

(1) In consultation with the planning council, the prime sponsor shall make appointments to a youth council which include individuals who are representative of the local educational agencies, the local vocational advisory council, postsecondary education institutions, business, unions, the State employment security agency, local governments and nongovernment agencies which are involved in serving youth, the local community, and the prime sponsor. In addition, youth council members shall include youth who are participants in, or eligible for YETP.

(2) The youth council may be either an entirely separate council or a subcommittee or subcouncil to the planning council, or prime sponsors may use existing youth councils created with respect to other programs under this Act if these councils meet the requirements set forth in this section. In all cases, the youth council must report to the planning council.

(3) The youth council shall at a minimum make recommendations to the planning council with respect to the planning and review of all program activities under title III, part C, of the act, and shall review the proposed agreements with local educational agencies under YETP.

(4) No member of the youth council shall cast a vote on any matter under deliberation by the youth council which has direct bearing on services to be provided by that member or any organization with which that member is associated.

(c) *Submission of application.* Six copies of an application for a YETP program shall be submitted annually by prime sponsors to the Director, DINAP, who will inform them of the due date. Such dates may vary from year to year depending on when YETP funds are made available to the Department of Labor.

§ 97.1206 Allowable costs.

Allowable costs are the same as those under § 97.161. Costs for administration are limited to 20 percent. The costs of instructional, construction, or other work material, equipment, and supplies must be paid for with administrative funds.

§ 97.1207 Project application content.

(a) Each application will have the following forms: YETP narrative, program planning summary, and budget information summary.

(b) The narrative section of the YETP proposal shall cover the following:

(1) Objectives of the program;

(2) Local priorities;

(3) Implementation planning;

(4) Program activities and services;

(5) Management and administration;

(6) Results and benefits expected from the program;

(7) How the program will:

(i) Develop long-term and coordinated solutions to the employment problems of youth, especially the economically disadvantaged;

(ii) Enhance job prospects and career opportunities for youth; and

(iii) Enable participants to secure appropriate unsubsidized employment (sec. 341).

(8) That identified performance goals are reasonable and can be achieved;

(9) That a youth council has been established (if required) and has participated in the planning and review process for the youth plan;

(10) The in-school program to be operated pursuant to § 97.1211;

(11) Assurance of compliance with the Act and the regulations in this subpart; and compliance with the hazardous occupations orders issued pursuant to the Fair Labor Standards Act and set forth at 29 CFR 570.50 et seq. with respect to the employment of youths under 18 years of age and the Child Labor Standards of 29 CFR 570.31 et seq. with respect to the employment of youths aged 14 to 15.

§ 97.1208 Modifications.

An approved project may be modified after consultation with and the approval of the Director, DINAP, notwithstanding the provisions of § 97.121.

PROGRAM OPERATIONS

§ 97.1209 Eligibility for participation.

(a) A prime sponsor shall assure that every individual participating in the program meets the following criteria at the time of application and enrollment.

(1) Is an Indian or Native American, and

(2) Is unemployed or underemployed as defined in § 94.4(fff) of this title or is an in-school youth as defined in § 97.1202; and

(3) Is 14 through 21 years of age; and

(4) Is a member of a family with total family income at or below 85 percent of the lower living standard income level, as defined in § 94.4 (nnn) of this title. Exclusions from total family income shall include those items listed as exclusions in § 94.4(xxx) of this title, income from tribal work experience and Indian general assistance, lease income derived from trust land, and per capita payments.

(b) For the purpose of participating in in-school career employment experience, the youth must need such participation in order to continue his or her education (sec. 346(c)).

(c) If, at the time of enrollment into any other program under the Act, an individual met the eligibility requirements of paragraph (a) of this section, that individual is eligible to transfer from that other program into YETP, and into YETP career employment experience if the individual also meets the requirements of paragraph (b) of this section.

(d) The citizenship and veterans provisions of §§ 95.32 (d) and (e)(1) of this title also apply to YETP.

(e) Youth need not meet the income criteria described in § 97.1209(a)(4) if they participate in a special component as described in § 97.1210(e) (sec. 345(a)(2)).

(f) Youth, who do not meet the income criteria defined in § 97.1209(a)(4), and who are not in special component described in § 97.1210(e) may be offered any employment related services but may not be offered on-the-job training, work experience, or training opportunities funded under YETP.

§ 97.1210 Allowable activities and services.

(a) Programs may include any type of employment and training activity authorized under title III, section 302 of the Act except public service employment.

(b) Each participant in on-the-job training, work experience, or career employment experience shall be assured of the general benefits and working conditions for program participants provided in § 97.136 of this title.

(c) No youth may enroll in full-time employment opportunity if the prime sponsor determines that there is evidence he or she dropped out of high school in order to participate (sec. 353(f)(2)). A written job description shall be developed and maintained for all work experience and OJT positions funded under this subpart to provide a basis for determining its comparability to existing jobs of other individuals similarly employed.

(d) The child labor standards specified in 29 CFR Part 570.31 et seq. shall apply to the employment of 14 or 15 year olds under YETP. The hazardous occupations orders issued pursuant to the Fair Labor Standards Act and set forth at 29 CFR Part 570.50 et seq. shall apply to the employment of 16 to 17 year olds under YETP.

(e) A prime sponsor may design a special component using up to 10 percent of its YETP funds to serve a mixture of youth from families above and below the income level specified in § 97.1209(a)(4) in order to test the desirability of serving such a mix of youth.

§ 97.1211 In-school programs.

(a) *Activities and services.* An in-school program is required and shall be designed to provide either or both of the following two classifications of services (sec. 342):

(1) Transition services—(i) These services shall be designed to assist youth to move from school to unsubsidized jobs.

(ii) These services may include, but are not limited to:

(A) Outreach, assessment, and orientation;

(B) Counseling, including occupational information and career counseling;

(C) Activities promoting education to work transition;

(D) Provision of labor market information;

(E) Services to youth to help them obtain and retain employment;

(F) Literacy and bilingual training;

(G) Attainment of certificates of high school equivalency;

(H) Job sampling, including vocational exploration in the public and private sector;

(I) Institutional training, including development of basic and job skills;

(J) Transportation assistance;

(K) Child care and other necessary supportive services;

(L) Job restructuring to make jobs more responsible to the objectives of this subpart, including assistance to employers in developing job ladders of new job opportunities for youths, in order to improve work relationships between employers and youths;

(M) Provision of information regarding employment and training related opportunities;

(N) Job development, direct placement, and placement assistance to secure unsubsidized employment for youth to the maximum extent feasible and referral to employability development programs;

(O) Assistance in overcoming sex stereotyping in job development and counseling; and

(P) Outreach and other services to increase the labor force participation rate among minorities and women.

(2) *Career employment experience.* This activity is a combination of well-supervised employment (work experience or on-the-job training) and certain transition services including, at a minimum, career information, counseling, and guidance. Any work experience or on-the-job training must include these minimum services. Where work experience or on-the-job training is provided for in-school youth under agreements with local educational agencies, placement services must also be included.

(b) *Agreement with local educational agencies.* (1) Prime sponsors shall serve in-school youth in programs designed to enhance their career opportunities and job prospects (sec. 343(d)(1) pursuant to written agreements between them and local educational agencies (LEA's).

(2) Agreements may be between the prime sponsor and one or more local educational agencies or a combination of LEA's represented by one LEA.

(3) Each agreement may be either financial or nonfinancial, whichever is determined most appropriate by the prime sponsor and the LEA(s), and shall:

(i) Provide a description of the activities and services to be provided to participants;

(ii) Detail the responsibility of each party to the agreement for providing the activities and services; and

(iii) Contain provisions to assure that service and/or funds received pursuant to the agreement will not supplant State, local, or Federal funds expended for the same purpose.

(4) Additional provisions are required in those agreements which provide for career employment experience opportunities. These include:

(i) Assurances that youth will be provided constructive work experience, which will improve their ability to make career decisions and provide them with basic work skills needed for regular employment;

(ii) Assurances that such agreements have been reviewed by the youth council;

(iii) Assurances that job information, counseling guidance, and placement services will be made available;

(iv) Assurances that jobs provided under this program will be certified by the participating educational agency or institution as relevant to the educational and career goals of the youths;

(v) Assurances that the prime sponsor will advise youth of the availability of other employment and training resources available in the local community; and

(vi) An assurance that career employment experience opportunities provided will be certified by a school-based counselor as being relevant to the career and educational program of the youth(s) (secs. 343(d)(2), 346(c)).

§ 97.1212 Payments to participants.

(a) Participants in training activities which are a combination of employment and training shall be paid in accordance with § 97.135.

(b) *Allowances.* Participants will be paid allowances in accordance with the criteria and process in § 97.134.

(c) *Wages.* Participants receiving wages shall be paid no less than the highest of:

(1) The minimum wage under section 6(a)(1) of the Fair Labor Standards Act of 1938, but in the case of an individual who is 14 or 15 years old, the wage provided in accordance with the provisions of subsection (b) of section 14 of the Fair Labor Standards Act of 1938;

(2) The State or local minimum wage for the most nearly comparable employment, but in the case of an individual who is 14 or 15 years old the wage provided in accordance with the applicable provision of the applicable State or local minimum wage law; or

(3) The prevailing rates of pay, if any, for occupations and job classifications of individuals employed by the same employer, except that:

(i) Whenever the prime sponsor has entered into an agreement with the employer and the labor organization representing employees engaged in similar work in the same area to pay less than the rates provided in this paragraph, youth may be paid the rates specified in such agreement;

(ii) Whenever an existing job is reclassified or restructured, youths employed in such jobs shall be paid at rates not less than are provided under paragraph (c) (1) or (2) of this section, but if a labor organization represents employees engaged in similar work in the same area, such youths shall be paid at rates specified in an agreement entered into by the appropriate prime sponsor, the employer, and the labor organization with respect to such reclassified or restructured jobs, and if no agreement is reached within 30 days after the initiation of the agreement procedure referred to in this subparagraph, the labor organization, prime sponsor, or employer may petition the Secretary of Labor who shall establish appropriate wages for the reclassified or restructured positions, taking into account wages paid by the same employer to persons engaged in similar work;

(iii) Whenever a new or different job classification or occupation is established and there is no dispute with respect to such new or different job classification or occupation, youths to be employed in such jobs shall be paid at rates not less than are provided in paragraph (c) (1) or (2) of this section, but if there is a dispute with respect to such new or different job classification or occupation, the Secretary of Labor shall, within 30 days after receipt of the notice of protest by the labor organization representing employees engaged in similar work in the same area, make a determination whether such job is a new or different job classification or occupation; and

(iv) In the case of projects to which the provisions of the Davis-Bacon Act (or any Federal law containing labor standards in accordance with the Davis-Bacon Act) otherwise apply, the Secretary is authorized, for projects financed under paragraph (c) (2) and (3) of this section under $5,000, to prescribe rates of pay for youth participants which are not less than the applicable minimum wage but not more than the wage rate of the entering apprentice in the most nearly comparable apprenticable trade, and to prescribe the appropriate ratio of journeymen to such participating youths (sec. 352).

(d) Allowances and wages received by any youth under YETP shall be disregarded in determining the eligibility of the youth's family for, and the amount of, any benefits based on need under any Federal or federally assisted program (sec. 356).

§ 97.1213 Maintenance of effort (section 353(b)).

(a) The provisions of § 97.334 proscribing substitution of Federal funds for activities previously funded through other resources apply to all activities funded under this program (sec. 353 (b), (c), and (d)).

(b) The following provisions also apply to activities funded under this program:

(1) They will not result in the displacement of currently employed workers;

(2) They will not substitute jobs assisted under this part for existing federally assisted jobs;

(3) They will not employ any youth when any other person is on layoff by the employer from the same or any substantially equivalent job in the same area;

(4) They will not be used to employ any person to fill a job opening created by laying off or terminating the employment of any regular employee, or otherwise reducing the regular work force, in anticipation of filling vacancies by hiring youth to be supported under YETP;

(5) They will not infringe upon the promotional opportunities which would otherwise be available to persons currently employed in public service not subsidized under the Act;

(6) They will not permit a job to be filled in other than an entry level position in each promotional line until applicable personnel procedures and collective bargaining agreements have been complied with; and

(7) Job restructuring will not occur and new classifications will not be developed solely to negate established personnel procedures or to displace currently employed workers.

PART 97a—JOB CORPS PROGRAM UNDER TITLE IV OF THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

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AUTHORITY: Section 702(a) of the Comprehensive Employment and Training Act of 1973 as amended (Pub. L. 93-203, 87 Stat. 839) (29 U.S.C. 982).

SOURCE: 40 FR 50813, Oct. 31, 1975, unless otherwise noted.

NOMENCLATURE CHANGES: 41 FR 20884, May 21, 1976.

Subpart A—Purpose and Scope

§ 97a.1 Purpose and scope.

(a) The purpose of this Part 97a is to provide for a Job Corps program under Title IV of the Comprehensive Employment and Training Act (Act) of 1973, as amended. The provisions of Part 98 of this Title also apply to the Job Corps program except to the extent that they conflict with the provisions of this part.

(b) This part contains the policies, rules, and regulations pertaining to the Job Corps program.

(c) Definitions for terms used in this part, but not defined in Part 94 of this title, may be found in Subpart B.

(d) Statutory authority for the regulations contained in this Part 97a may be found in section 702(a) of the Act, as well as in other substantive provisions of the Act. Applicable statutory provisions, other than section 702(a), are noted generally in these regulations.

(e) The regulations in this part govern programs funded under the Comprehensive Employment and Training Act of 1973 prior to amendment and reauthorization in 1978 (Pub. L. 95-524, 92 Stat. 1909), and are thus in many particulars superseded by regulations implementing the reauthorized Comprehensive Employment and Training Act, Pub. Law 95-524, 92 Stat. 1909, which are being codified at 20 CFR Parts 675 *et seq.* Any questions regarding the applicability of any particular regulation in Title 29 should be addressed to the Regional Administrator for the Employment and Training Administration.

[43 FR 50813, Oct. 31, 1975, as amended at 44 FR 37911, June 29, 1979]

Subpart B—Definitions

§ 97a.10 Definitions.

"Accountability, relief of." DOL approval which authorizes the deletion or disposal of property items from the records of a contractor or of a governmental agency which operates a Job Corps center.

"Accountability system." The center operator's system of monitoring corpsmember attendance, physical location, and status, e.g., leave, pass, etc.

"Act." The Comprehensive Employment and Training Act of 1973 as amended (Pub. L. 93-203, 87 Stat. 839).

"Appraised value." The estimated market value of a project completed primarily by corpsmembers as a vocational skills training project, but calculated as if the project had been done by formal contract methods.

"Assignment." The action taken by the regional office whereby a youth is notified of his or her eligibility for Job Corps, the center of assignment, transportation information, and his or her date of arrival on center.

"AWOL." The unauthorized absence of a corpsmember without official leave in excess of 24 continuous hours.

"Capital improvement." Any modification, addition, or restoration which increases the usefulness, productivity, or serviceable life of an existing building, structure, or major item of equipment which is classified for accounting purposes as a "fixed asset" so that the recorded value is increased by the cost of the improvement and the asset subjected to depreciation.

"Capital outlay funds." Funds other than center operational funds provided to centers for approved items of construction, rehabilitation, equipment and GSA vehicle leases.

"Center." A Job Corps center.

"Center Director." The center's chief administrative officer or his or her designee.

"Center operator." The federal agency or contractor which runs a Job Corps Center under an agreement or contact with DOL.

"Center operational funds." Funds provided by DOL for operating a center, including funds for food, corpsmember clothing, vocational training, education, residential and non-residential support programs, corpsmember allowances, health care, allotments and travel, staff salaries, center lease costs when applicable, allowable administrative and maintenance costs, and operational supplies and materials.

"Center review board." The group which reviews charges brought against corpsmembers for infractions of center rules.

"Center standards officer (CSO)." The individual designated by the Center Director to enforce standards of conduct.

"Civilian Conservation Center (CCC)." A center operated on public land under an agreement between DOL and another Federal, State or local governmental entity, private nonprofit organization, or Indian tribe or organization, whose programs are focused on conservation, development and management of public resources, or development of community projects in the public interest (sec. 407(a)).

"Community relations council." The group of center and local individuals who meet periodically to promote harmonious relations between the center and the local community.

"The Comprehensive Placement Plan." The center document which outlines placement objectives, utilization of staff and other resources, and specific areas of placement responsibility.

"Contract centers." Centers administered under a contract between Job Corps and a corporation, partnership, public agency, or similar legal entity.

"Contractor." Any person, corporation, partnership, public agency or similar legal entity which enters into a contract with the Job Corps to deliver goods or services for the Job Corps.

"Corpsmember." An individual who has been selected for enrollment in Job Corps shall be officially a corpsmember: For resident corpsmembers, from the date he or she leaves home to begin government-authorized travel to the assigned Job Corps center to the date of arrival at the official travel destination upon termination from Job Corps as authorized by the Center Director. For non-resident corpsmembers, from the time he or she arrives at any center activity or program each day until he or she leaves such activity or program.

"Corpsmember appeal record." The record of a corpsmember's Center Review Board hearing, including all documents pertaining to the case and any additional documents supporting the corpsmember's appeal of a disciplinary discharge.

"Corpsmember council." The group of elected corpsmembers who determine appropriate sanctions for minor infractions of rules, and who are overseen by the Center Standards Office and the Center Director.

"Corpsmember handbook." The document given all corpsmembers during orientation which outlines Job Corps center services, rules, and regulations.

"Corpsmember counseling record." The confidential compilation of significant contacts between a corpsmember and counselor or residential advisor along with ancillary information pertaining thereto, which is not a part of the terminated Corpsmember Personnel Record.

"Corpsmember Personnel Record." The record compiled during enrollment and consolidated at a corpsmember's termination, which includes the Corpsmember Personnel Folder, containing documents relating to such matters as travel, allowances and allotments, and leave; the record of educational and vocational achievement; and the sealed health record envelope, containing the confidential health record.

"Corpsmember year." A period of time equivalent to a single corpsmember's being enrolled in Job Corps for one full year.

"Dispensary/infirmary." The dispensary shall mean the area of the on-center health facility which serves ambulatory patients (out-patients) as distinct from the on-center infirmary which serves bed patients.

"Disruptive home life." A home life characterized by conditions such as:

(a) The youth's living in an orphanage or other protective institution;

(b) The youth's suffering from serious parental neglect;

(c) The youth's father or mother being a chronic invalid, alcoholic, narcotics addict, or having a serious mental disorder or other serious health condition.

"DOL." The United States Department of Labor.

"Economically disadvantaged." A person who is a member of a family which receives cash welfare payments, or whose annual income in relation to family size does not exceed the most recently established poverty levels determined in accordance with criteria established by the Office of Management and Budget (OMB).

"Eligible deliverer." Any individual or organization which is eligible to receive Federal funds from DOL to establish, operate or provide service to any Job Corps program or activity.

"ETA." The Department of Labor, Employment and Training Administration.

"Environmental health program." The center program which sees that the center is free from environmental hazards to corpsmember and staff health and safety.

"Extension program." A specialized Job Corps program which provides work experience and/or vocational training for corpsmembers who have completed training at a center.

"Facility survey." An in-depth engineering evaluation of an on-going center, including the utilization of center facilities, the condition of buildings and utility systems especially as they affect life and safety, facilities maintenance procedures and problems, and the scope and estimated costs of site modifications required to meet building and safety codes and/or program requirements.

"Federal bonding program." Fidelity bonding coverage offered by a State employment service to qualified job applicants who could not otherwise obtain it.

"Finance center." The United States Army Finance and Accounting Center. Indianapolis, Indiana, which, under interagency agreement between DOL and the Department of Defense, handles the payment of corpsmember allowances, allotments, and transportation charges.

"Functional evaluation." A combined assessment of a corpsmember by the center health staff, and the residential living, counseling, education, and vocational training staffs which enables the Center Director to make an informed judgment as to whether the corpsmember should be retained, transferred, or terminated for health reasons.

"Imprest funds." That revolving fund issued to another Federal agency by the Treasury Department after such department has approved the agency's request for an imprest fund and that agency's Imprest Fund Cashier, who may then make specified payments from the fund.

"Job Corps center review." A systematic periodic evaluation conducted at individual centers by regional and/or national office personnel to assess the effectiveness of center programs, adherence to Job Corps policies, and compliance with contracts or agreements.

"Leisure time employment." Part-time paid employment of corpsmembers.

"Maximum benefits systems." A Center program to evaluate corpsmember progress and performance and to determine the services necessary for each corpsmember to achieve the maximum benefit from the total Job Corps program.

"Mental health consultant." A fully certified or accredited mental health professional who may be a qualified psychiatrist, clinical psychologist, psychiatric social worker, psychiatric nurse, or other professional whose background, training, and skills are appropriate to the mental health needs of the center.

"Multi-regional input center." A center which receives corpsmembers from two or more DOL regions.

"National office." The national office of the DOL MA.

"Occupational code." A code which is contained in a systematic arrangement of jobs according to significant factors involved in the job or group of jobs in accordance with the Dictionary of Occupational Titles.

"Occupational exploration program." The center program whereby a corpsmember is made aware of the vocational training opportunities available on center.

"OMB." The Office of Management and Budget.

"Operational support services." Activities or services required ancillary to the direct operation of Job Corps, such as recruitment and screening services, union contracted vocational training and off-center educational training, placement services, health services, and miscellaneous logistical services.

"Placement." Terminated corpsmember employment, entry into the Armed Forces, or enrollment in other training or education programs.

"Placement agency." An organization acting pursuant to a contract with or grant from the Job Corps which provides placement services to corpsmembers.

"Program direction funds." Funds provided by the Job Corps to Federal agencies which operate CCC's to cover costs of general administrative services necessary for overall management above the center level.

"Progress performance evaluation panel." (P/PEP): The panel of representatives of center program components which convenes periodically as part of the maximum benefits system to evaluate individual corpsmember performance, and to make recommendations to the Center Director.

"Readjustment allowance." The money accumulated by and reserved for each corpsmember on a monthly basis during tenure in Job Corps which is paid in a lump sum after termination.

"Region." A DOL region consisting of an aggregate of States.

"Regional Administrator, Employment and Training Administration, (RA)." The chief ETA official in each DOL regional office.

"Regional office." The Department of Labor ETA Regional Office, Office of Job Corps.

"Regional appeal board." The regional board which considers corpsmember appeals from disciplinary discharges.

"Resident of the United States." A legal resident of the United States or of a State.

"Screening agency." An organization acting pursuant to a contract with or a grant from the Job Corps which recruits, screens, and enrolls youth into Job Corps.

"Secretary." The Secretary of the United States Department of Labor, or his designee.

"Spike camp." A temporary residential facility which is established and maintained in support of an off-center vocational skills training project which is too far from the center for commuting.

"State." The fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

"Substantive screening error." Any error which violates the enrollment criteria specified in these regulations.

"Training achievement record." A Job Corps approved document used to record the step-by-step attainment of specific vocational skills by each corpsmember.

"Transfer." The reassignment of a corpsmember from one center to another.

"Travel package." The itinerary, meal ticket(s), transportation ticket(s), and any instructions necessary for a corpsmember to depart from and arrive at specific destinations.

"Unauthorized goods." Firearms and ammunition; explosives and incendiaries: Knives with blades longer than 2"; homemade weapons; all other weapons and instruments used primarily to inflict personal injury; stolen property; drugs, including marijuana, depressants, stimulants, hallucinogens, tranquilizers, and drug paraphernalia except as such drugs and/or paraphernalia are prescribed for medical reasons.

"Vocational skills training (VST) funds." Funds, distinct from center operational and capital outlay funds, provided for payment of equipment, supplies and technical assistance for vocational skills training projects.

"Vocational skills training (VST) projects." Activities which provide vocational instruction to corpsmembers through actual construction or improvement of permanent facilities or projects on public lands or as a public service.

"Work experience." The opportunity for corpsmembers to apply specific vocational skills learned in Job Corps in an on-the-job situation, under the supervision of a public or private organization which normally employs persons in the corpsmember's trade.

[40 FR 50813, Oct. 31, 1975, as amended at 41 FR 20884, May 21, 1976]

Subpart C—Funding, Site Selection and Facilities Management

§ 97a.20 Available funds.

The Secretary shall make available for any fiscal year not more than 20 percent of the amount appropriated to carry out the Act (excluding any amount in excess of $250,000,000 made available for carrying out Title II of the Act) for purposes of carrying out Title III and Title IV (Job Corps) of the Act. The Secretary shall determine the amount of such funds which shall be used in any fiscal year for the operation of the Job Corps pursuant to section 4(e) of the Act.

§ 97a.21 Eligibility for funds and eligible deliverers.

(a) Funds shall be made available by the Secretary to eligible deliverers for the operation of Job Corps centers and for the provision of Job Corps operational support services. The amount of funds to be provided for the operation of individual centers and for operational support services shall depend upon the number of corpsmembers or applicants to be served, the size and type of center, the mix of services to be provided and such other factors as may be pertinent to a determination.

(b) Centers may be in urban or rural areas. They shall focus upon providing training, education, residential and other supportive services necessary to prepare corpsmembers to become more responsible, productive, and employable (sec. 401).

(c) Eligible deliverers for the operation of centers and for the operational support services necessary to center operation shall be units of Federal, State and local government, State and local public agencies, private profit and nonprofit organizations, and Indian tribes and organizations, except that Civilian Conservation Centers (CCC's) shall not be operated by profitmaking organizations.

§ 97a.22 Funding procedures.

(a) DOL contracting officers shall request proposals for the operation of all centers, and for provision of operational support services, either directly from Federal agencies, or pursuant to Federal Procurement Regulations for work to be done under contract. The request for proposal for each center or for each operational support service contract shall describe specifications and standards unique to the operation of the center or for the provision of operational support services.

(b) Job Corps center operators shall be selected and funded on the basis of proposals received, according to the following criteria as appropriate:

(1) The degree to which the proposal demonstrates understanding of the objectives of the program (Design of Program);

(2) The quality of proposed recruitment and placement support;

(3) The quality of proposed educational training;

(4) The quality of proposed vocational training;

(5) The quality of proposed residential and other corpsmember support services;

(6) The quality of proposed administrative support services;

(7) Past demonstrated effectiveness in the operation of a Job Corps center or similar activity;

(8) The quality of proposed staff;

(9) The relative price advantage to and government; and

(10) The ability and intention to adhere to these regulations, the requirements of the Act, and other applicable law.

(c) The delegated contracting officer of the DOL, ETA, shall negotiate with eligible deliverers for operational support services on the basis of the criteria developed for each specific service to be rendered. Such criteria shall be listed in the request for proposals.

(d) Recruitment, screeening and placement services shall normally be performed under contracts negotiated by regional offices which spell out the number of corpsmembers whom the screening agencies are expected to depart for centers, and other support services they shall provide to applicants and corpsmembers. In exceptional circumstances, when it can be demonstrated that a grant will accomplish the same quality of performance at reasonable cost, the RA may waive this requirement for contract and establish other types of agreement on an individual basis.

(e) The Secretary may enter into interagency agreements with eligible deliverers which are Federal agencies for the establishment and operation of Civilian Conservation Centers. Such interagency agreements shall ensure compliance by such Federal agencies with the regulations under this Part.

(f) All agreements and contracts shall be made pursuant to the Federal Property and Administrative Services Act of 1949, as amended, and the procurement regulations at 41 CFR Chapter 1 and the DOL procurement regulations at 41 CFR Chapter 29.

(g) Regional offices shall submit copies of all negotiated contracts to the national office.

(h) Job Corps may make advance payments by Letter of Credit or Treasury check, but only to nonprofit contractors, and only in accordance with the regulations found at 31 CFR Part 205.

(i) Job Corps shall pay contractors by U.S. Treasury check in accordance with the procedures of Chapter 1 and 2 of 41 CFR 1.30. Specific schedules and procedures shall be spelled out in each contract.

(j) Job Corps payments to federal agencies which operate CCC's shall be made by an advance transfer of obligational authority from the Department of Labor to the respective operating agency on a quarterly basis.

§ 97a.23 Center performance measurement.

(a) Regional offices shall negotiate with each center to establish mutually agreeable statistical performance goals which the center shall then strive to achieve. Such goals shall be included in the contract or spelled out in a memorandum of agreement between the center and the regional office. Each Center Director shall maintain data on the center's performance in relation to its goals, and periodic meetings between each center and its regional office shall be held to evaluate such data, and to determine ways to improve performance or to readjust goals as necessary.

(b) Examples of performance goals which may be mutually agreed upon include such items as numbers of center corpsmembers who:

(1) Were program completers;

(2) Were absent, both as AWOL's from the center and from educational and vocational training classes;

(3) Were enrolled in vocational training and in the GED program, and those who passed the GED test;

(4) Terminated prior to 30, 60, 90, and 180 days; and

(5) Other such items as mutually agreed upon.

§ 97a.24 Site selection and facilities management.

(a) For contract centers, when the Director of Job Corps determines that a center is to be established or relocated:

(1) The regional offices shall locate sites or facilities when Job Corps centers are to be established or expanded. Subsequent to such action, the regional office shall request the national office to conduct a site survey, on the basis of which the national office shall prepare a written report, including:

(i) A preliminary engineering evaluation of the condition and capacity of existing buildings, pavements, utility systems, installed equipment, and all other real property components; and

(ii) A preliminary cost estimate for necessary rehabilitation and new construction required;

(2) When the regional and national offices agree, on the basis of the survey, that the site is a favorable one, the national office shall conduct a utilization study, which shall include: (i) A detailed engineering report on the facility, including outline drawings of buildings, proposed capacities and utilization, budget cost estimates for rehabilitation and new construction required, and an estimated time schedule reflecting the total cycle from plans and specifications to completion of construction;

(3) On the basis of a favorable regional and national office judgment, based on the site survey and utilization studies, the national office shall initiate action to obtain an appraisal, if necessary, and to acquire the property. Lease of private property shall be negotiated between the owner and the national office;

(4) The national office shall purchase all property when this is necessary, after other attempts to obtain the needed property have been exhausted or have been proved not cost beneficial;

(5) In the case of approved sites for new center establishment, the national office shall be responsible for all design and construction actions in consultation with regional offices. Such actions shall include the:

(i) Negotiation, award, execution, and administration of design contracts;

(ii) Review and approval of design packages;

(iii) Supervision of bid openings;

(iv) Award and administration of construction contracts; and

(v) Surveillance and acceptance of work done pursuant to such contracts; but

(6) The regional offices shall be responsible for all actions pursuant to paragraph (a)(5) of this section for ongoing centers, after the national office has arranged for acquisition of any real property involved when an existing center or a component thereof is to be replaced.

(b) For federally operated centers, either the Secretary or a Federal agency may propose a site on public lands, and if discussions between them establish the advisability of such, the Secretary may require that the agency submit a site survey and utilization plan. If the Job Corps decides to establish a center, facilities engineering and real estate management will be carried out by the agency pursuant to an interagency agreement and the regulations of this part.

(c) In making a determination as to appropriate sites for CCC's, the probable environmental impact of the center and the long-term potential for development of VST projects within one hour's commuting distance of the center shall be considered.

(d) At such time as a CCC runs out of acceptable VST projects within one hour's commuting distance of the center, and/or a negative environmental impact occurs because of the center's location, the national office shall consider its relocation.

(e) The Secretary shall submit a plan for any proposed center to the Governor for approval, whose approval shall be considered granted if no response is received within 30 days (sec. 415(c));

§ 97a.25 Capital improvements.

(a) *For federally-operated centers.* Centers operating under interagency agreement shall submit requests for capital outlay funds to the national office for review and approval, pursuant to § 97a.-109.

(b) *For contract centers.* (1) Requests for needed capital improvements for each fiscal year shall be submitted to the regional offices, which shall send them to the national office to determine priorities within the overall Job Corps approved budget. Such requests for each center shall include:

(i) A description of the project;

(ii) Whether the design is to be accomplished by an architecture and engineering firm or by qualified center personnel;

(iii) Whether the construction is to be accomplished by subcontract, center staff, corpsmembers, or otherwise;

(iv) Anticipated costs and the basis for the estimate; and

(v) Projects accomplished during the previous year, the amount spent on such projects and the balance of capital improvement funds remaining;

(2) For new construction projects on contract centers which are estimated to cost more than $100,000, or rehabilitation projects estimated to cost more than $50,000, plans and specifications shall be submitted as they are being developed by the architect to the national office for technical review, as follows:

(i) Drawings and outline specifications (Design Development) when they are 15 to 20 percent complete, at the scale to be used on working drawings, and including load capacities of mechanical and electrical systems;

(ii) Working drawings and specifications (Preliminary Design) when they are 60 to 70 percent complete, including sufficient material to permit a thorough overall review, and a cost estimate broken out by disciplines such as architectural, mechanical, electrical, and structural; and

(iii) Complete working drawings and specifications (Final Contract Document) adequate for bid, contract and construction purposes, a refined cost estimate; and a realistic completion date; and

(3) When a regional office plans to contract for new construction in an amount greater than $100,000, or for rehabilitation contracts in an amount

greater than $50,000, the center shall open bids, compile all bids received from prospective contractors in an abstract, and together with a letter giving the results of an investigation of the contractor which the center recommends for the award, shall submit such bids to the regional office for approval.

§ 97a.26 Protection and maintenance of contract center facilities.

(a) When an existing center or component thereof is being replaced, and a contractor is already operating the center, the protection and maintenance of such new facilities shall be the responsibility of the regional office from the effective date of the lease or purchase of the facility.

(b) When a portion of an existing center is to be closed, and a contractor is operating the center, the regional office shall be responsible for the protection and maintenance of the site.

(c) The national office shall protect and maintain centers which are completely closed and all center sites where there is no contractor.

§ 97a.27 Facilities surveys.

The national office shall work with the regional office in conducting a facilities survey of each center at least every two years, and submit reports of the resultant findings to the regional office and the center.

Subpart D—Job Corps Participant Enrollment, Transfers, Terminations, and Placement

§ 97a.30 Recruitment and screening of corpsmembers.

(a) Screening agencies shall be selected by regional offices and shall operate under contracts or grants provided to them.

(b) Screening agencies shall develop referral sources, actively seek out potential applicants, conduct personal interviews with all applicants, and determine who are interested and likely Job Corps candidates. They shall also determine whether the potential applicant's educational, vocational, health and other placement-related needs can best be met through a Job Corps residential or nonresidential program or through an alternative program in the youth's home community.

(c) Screening agencies shall complete all Job Corps application forms, pursuant to a Job Corps Forms Preparation Handbook, which shall be issued by the Director, Job Corps.

(d) To establish eligibility pursuant to sections 403, 404 (a) and (b), and 405 of the Act, during the screening process agencies shall determine whether each applicant:

(1) Is at least 16 and not yet 22 years of age at the time of proposed enrollment;

(2) Is a legal resident of the United States or of a State;

(3) Requires additional education, vocational training, and related support services to participate successfully in regular school work, qualify for other training programs, satisfy Armed Forces entrance requirements, or qualify for a job where prior skill or training is a prerequisite;

(4) Is an economically disadvantaged individual or comes from an economically disadvantaged family according to the Poverty Income Guidelines established by OMB;

(5) Has sufficient mental ability to benefit from the program, as evidenced by information from schools or another appropriate community resource,

(6) Demonstrates the motivation to obtain maximum benefit from the program, as evidenced by a voluntary desire to enroll and the youth's signed commitment to complete Job Corps training. The screener shall be sure that the applicant has a clear understanding of the Job Corps and of what will be expected of the applicant at the center and that there is a reasonable expectation that he or she will succeed in the Job Corps. Whenever practicable, the regional office shall arrange for screening and placement agency staffs to visit centers where their applicants are to be assigned. Screening agencies should arrange for pre-enrollment visits for applicants to their centers of assignment when such centers are easily accessible.

(7) Has a signed consent for enrollment from a responsible parent or

guardian if the applicant is under the age of majority;

(8) Has established suitable arrangements for the care of any dependent children for the proposed period of enrollment;

(9) Is not on probation, parole, under a suspended sentence, or under the supervision of any agency as a result of court action or institutionalization, unless the court or other agency having jurisdiction states in writing on the appropriate form that:

(i) The court has acted, with the result of such action;

(ii) The youth has responded positively to supervision;

(iii) The applicant may leave the State of jurisdiction while enrolled in Job Corps;

(iv) No personal, face-to-face supervision of the applicant by a correctional official will be required during enrollment, whether or not the case is transferred under an interstate agreement, unless prior approval has been given by the regional office and the Center Director; and

(v) Any reports needed from the center will be requested by the court or other agency each time they are wanted; and

(10) To qualify for residential training, is currently living in an environment so disruptive that his prospects for successful participation in a nonresidential program are substantially impaired. Disruptive conditions which may establish this need include, but are not limited to:

(i) A disruptive home;

(ii) An unsafe, unhealthy or overcrowded dwelling place; and

(iii) A neighborhood or community characterized by high crime rates, high unemployment rates, high school dropout rates, a high proportion of poor families and similar environmental handicaps.

(e) The screening agency shall also collect sufficient information on required forms concerning any behavioral, medical, or mental health problem which the applicant may have to enable the regional office to determine whether the applicant is:

(1) Physically and emotionally able to participate in normal Job Corps duties without extensive medical treatment; and

(2) Free of any behavioral problem so serious that it would present a potential hazard to the youth or to others in the program. The candidate must exhibit a reasonable potential for participating in group situations. Hazardous behavioral problems shall include: (i) A history of serious and violent behavior against persons or property, of recent repetitive delinquent acts, or of other serious behavioral problems, unless a professionally qualified person who knows the applicant's individual situation has good evidence to judge that: (A) The applicant's conduct will not be harmful to anyone in the Job Corps, and

(B) The Job Corps will most likely help the applicant.

§ 97a.31 Selection, assignment and enrollment of corpsmembers.

(a) Screening agencies shall submit completed applications of those youth they believe to be eligible for Job Corps to the regional office which shall make final determination on each applicant's eligibility for Job Corps. Such determination may be made using other means, pursuant to a written agreement between the regional office and the screening agency but only when there is no doubt as to the applicant's eligibility;

(b) When there is a question as to whether an applicant meets one or more of the eligibility criteria for enrollment but the screening agency believes that the youth should be enrolled because of exceptional circumstances, the screening agency shall write a justification supporting this belief and submit it with the application to the regional office for final decision as to eligibility. In such cases, the regional office may ask the screener for any additional information it deems necessary to make this determination. No exceptions to the age or permanent United States resident criteria shall be granted.

(c) When the application reveals a health problem which raises a question as to the applicant's capability to participate in the program, the regional office shall authorize screeners to obtain either further information from former providers of medical, mental health, or dental services, or a full or partial medical examination and submit it to the regional office for review prior to the final determination of eligibility. Payment for those health services which cannot be obtained without cost by screening agencies shall be arranged for and have prior approval of the regional office.

(d) The regional office shall notify the screening agency as to which applicants have been selected and which rejected, and the screening office shall notify the applicants. For those selected, the regional office shall make center assignments to centers nearest the youth's home when this is feasible (section 406(d)), based upon the number of center openings, the training opportunities available at the center, and the entry requirements of the center's programs. The regional offices shall send the complete application folder to the center, notify screeners of the center of assignment, and issue a travel package to them for each selected applicant.

(e) When assigning applicants, regional offices shall give lowest priority to those requesting readmission, except for those who received medical terminations.

(f) When, during the course of the screening process, it becomes clear that an applicant is ineligible, or when the regional office rejects an applicant, the screening agency shall inform the applicant of the reason and make every effort to provide needed services or to refer the youth to other community resources.

(g) Screeners shall notify selected applicants of their center of assignment, conduct an assignment interview, arrange for administration of the oath or affirmations required by section 406(c) of the Act, arrange for the departure of the prospective corpsmember according to the itinerary set out in the travel package, and prepare the enrollment and departure forms.

(h) The regional office shall make every effort to see that the application folders of approved applicants and Travel Itineraries listing the name and scheduled time of arrival for each corpsmember are received at the center of assignment at least five working days prior to the schedule arrival date.

(i) The Center Director, no later than five working days following the scheduled arrival date for each corpsmember, shall submit an annotated copy of the Travel Authorization and other related travel documents to the regional office, indicating which corpsmembers arrived and which did not arrive, and the regional office shall notify the screener. The center shall retain the application folders of those who do not arrive for 15 days, after which time such applications shall be returned to the regional office marked "no-show".

(j) Instructions for completion and distribution of all forms mentioned in this section shall be found in the Job Corps Forms Preparation Handbook.

§ 97a.32 Enrollment by readmission.

A youth may apply for readmission provided the youth has participated in Job Corps for less than 24 months and can be expected to complete a program within the remaining portion of the youth's 24 month enrollment period. No youth shall be readmitted directly to an extension program. Regulations for screening and selection of applicants for readmission are the same as for initial enrollment, except that only in exceptional cases shall a youth be readmitted prior to six months after the youth's termination, more than one time, after receipt of a disciplinary discharge, or when readmission is not recommended by the former Center of assignment.

§ 97a.33 Transfers.

(a) The Center Director may arrange through the regional office for the transfer of a corpsmember from one center of assignment to another center or to an extension program when:

(1) A corpsmember is interested in and has an aptitude for a program of training not available at the center of assignment;

(2) A change in environment or associations for the corpsmember will enhance the chances for program completion;

(3) A corpsmember has the potential ability to continue in Job Corps successfully, but will need health services not available at the center of assignment; or

(4) A corpsmember's appeal of a disciplinary discharge is sustained.

(b) When the Center Director has decided that the transfer of a corpsmember is advisable, he or she shall request approval in writing from the regional office having jurisdiction over the center.

(c) The regional office shall approve or disapprove the request, and, if approved, shall locate an opening suitable to the corpsmember's needs, in the same region if possible, or in another region, through coordination with that regional office.

(d) After obtaining approval for the transfer from the receiving center, the regional office having jurisdiction over the losing center shall issue travel orders and notify both centers of the corpsmember's date of departure and arrival time.

(e) The losing center shall notify all concerned parties of an approved impending transfer, and shall see that all of the corpsmember's records are brought up to date, including a current evaluation of his or her health condition, and forwarded to the receiving center. It shall also submit necessary forms to the finance center to effect the change in address for allowance purposes.

(f) The receiving center shall assume responsibility for a transferring corpsmember on the date and at the time of departure from the losing center, and shall notify the regional office in which the losing center is located if the expected corpsmember does not arrive on schedule. It shall also submit the notification of termination to the finance center.

§ 97a.34 Extensions of enrollment.

(a) The Center Director shall see that the total length of enrollment of a corpsmember does not exceed 2 years except that the regional office may approve an extension:

(1) When a course of instruction to qualify a corpsmember of placement, including one provided through an extension program, can be completed in 4 months or less. In extraordinary circumstances, the regional office may request approval of a longer extension from the national office;

(2) For such time as a corpsmember is under pending criminal charges (section 406(a)); and

(3) For such time as it takes to stabilize a health condition pending medical termination and referral.

(b) The Center Director shall note the date and reason for approval of such extensions in writing and make the written approval a part of the corpsmember's personnel record.

§ 97a.35 Federal status of corpsmembers.

Corpsmembers shall not be deemed Federal employees and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of employment, leave, unemployment compensation, and Federal employee benefits, except as provided by 5 U.S.C. 8143(a), and by §§ 97a.85, 97a.86, 97a.87, and 97a.88 (section 416(a)).

§ 97a.36 Terminations.

(a) Center Directors may terminate corpsmembers according to one of the following categories and conditions:

(1) A program completion termination may only be given when a corpsmember has remained in the Job Corps for at least 90 days and has either: (i) Satisfactorily completed an authorized vocational training program; or

(ii) Been accepted for additional education or training by such an organization as a high school or college, an apprenticeship program, or a technical school; or

(iii) Qualified for entry into the Armed Forces;

(2) A maximum benefits completion termination may only be given when a corpsmember has remained in the Job Corps for at least 90 days and when the Center Director approves a recommendation for such termination made through the maximum benefits system. Such recommendation shall only be made by the Progress/Performance Evaluation Panel (P/PEP) when it believes that the corpsmember

has achieved as much total benefit from the total Job Corps program as his abilities will allow;

(3) An administrative termination, documentation of the reasons for which shall be sent to the regional office, may only be given when it has been established that a corpsmember has: (i) Fraudulently established his or her eligibility to enroll, or been enrolled as the result of a substantive screening error. Such terminations shall have prior regional office approval;

(ii) No further interest in the program, as evidenced by his or her failure to participate in or attend classes and other required activities, but does not wish to resign. Such terminations shall be made only after every effort has been made to determine and correct the reason(s) for non-participation, and after the Center Director obtains regional office approval;

(iii) Been on court-imposed probation or parole which is revoked;

(iv) Refused to allow a physical examination to be performed; or has

(v) A legally responsible parent or guardian who withdraws consent when the youth has not yet reached the age of majority in his or her home State. In such cases, the Center Director shall verify the requestor's legal responsibility for the corpsmember and shall urge the individual to reconsider;

(4) A medical termination may only be given after a referral has been made with the concurrence of the regional office to a resource which has agreed to provide needed care at no cost to Job Corps, and after persons responsible for the corpsmember, including the screening agency, have been notified of the health problem and referral plan, and asked to assist the corpsmember to follow through with such plan. The decision to approve or disapprove a medical termination shall be made by the regional office based on a recommendation of a center health professional. Such recommendation shall be based on the results of a functional evaluation of the corpsmember which reveals that: (i) A pre-existing or incurred disability, illness, or injury significantly interferes with or precludes further training in Job Corps;

(ii) The health problem is unusually long-term and/or complicated to manage;

(iii) Necessary treatment will be unusually costly; or

(iv) A corpsmember has completed the seventh month of pregnancy;

(5) A termination by resignation shall be given at any time a corpsmember so requests, except after a review board hearing begins. Under no circumstances shall a corpsmember be compelled to resign, nor shall any resignation be deemed a disciplinary discharge. A termination shall also be called a resignation when: a corpsmember who is AWOL is contacted but refuses to return to the center. In such cases documentation to this effect shall be included in the corpsmember's personnel record.

(6) A corpsmember shall be terminated as AWOL at the beginning of the 16th day of absence without leave when he or she has not contacted the center and the center's efforts to make contact have been abortive. The Center Director or the regional office may reinstate such a corpsmember if one or the other receives evidence that the AWOL corpsmember was unable to contact the center; and

(7) A disciplinary termination without a center review board hearing shall be given only when a corpsmember has been either convicted of a felony or confined under sentence for 61 days or more. A disciplinary discharge may also be given pursuant to § 97a.97 after a hearing by a center review board.

(b) The Center Director shall arrange for the completion and distribution of the Notice of Termination pursuant to instructions in the Job Corps Forms Preparation Handbook.

§ 97a.37 Exit procedures.

Whenever feasible, beginning at least 45 days prior to a corpsmember's termination, the center shall hold a refresher training program for the corpsmember to reinforce the World of Work program. The refresher program shall include training related to planning a job hunt, choosing the best job, filling out employment application forms, job interview techniques, and dress and conduct necessary to get and hold a job. Counseling on transition back to community life shall also be given.

§ 97a.38 Certificate of attainment.

The Center Director shall issue a certificate of educational attainment to each corpsmember who has satisfactorily completed a program. The certificate shall be developed by the Director, Job Corps, with the concurrence of the Department of Health, Education, and Welfare (section 408(c)).

§ 97a.39 Transportation.

(a) For travel authorized at government expense pursuant to these regulations, the national office shall place supplies of government transportation requests and meal tickets in regional offices which shall issue them directly or provide centers with supplies of the documents for the travel of corpsmembers. Regional offices shall establish procedures with vendors and screeners to permit periodic billing for travel needs, including meals, that cannot be purchased with government transportation requests or meal tickets, such accounts to be paid with United States Treasury checks. In the event such arrangements are not practicable, or in the event of emergency en route, regional offices may utilize their petty cash funds to pay necessary expenses.

(b) Regional offices or centers, as appropriate, using the most efficient and economical means available, shall provide transportation at government expense for corpsmembers only:

(1) From home on the date of enrollment to the center of assignment;

(2) After termination, from the center of assignment to either home or place of employment, whichever is agreed upon by the corpsmember and the Center Director, except that such destination must have prior approval of the regional office if it is further from the center than the place of enrollment;

(3) In the event of transfer, from the losing center to the receiving center or extension program;

(4) In emergency situations, from the center of assignment to home or elsewhere, and return;

(5) For home leave, from the center of assignment to the place of enrollment, or to the point in the United States or its possessions to which the family with whom the corpsmember was residing prior to enrollment has moved, and return. Approval of home leave to any other place shall have prior regional office approval.

(6) In the event of a corpsmember's death, shipment of remains from the center of assignment to the place of enrollment, or to another point in the United States or its possessions agreed upon by the next of kin and the Center Director.

(7) From the center of assignment and return when such journeys are in the interest of Job Corps, e.g., conferences or recruitment; and when travel is beyond the corpsmember's control, e.g., command appearances, but not when the trip is a result of unauthorized behavior on the youth's part; and

(8) From the center of assignment to the site of an employment interview, but only after prior regional office approval, and after the corpsmember has spent at least 90 days in the program. Such approval shall only be requested for terminating corpsmembers, and only when the Center Director has reasonable assurance that a job offer is bona fide, and that the employer will hire the corpsmember subject to the interview. If the corpsmember does not get the job, transportation shall be provided to his or her place of enrollment or to the point in the United States or its possessions to which the family with whom the corpsmember resided prior to enrollment has moved. If the cost greatly exceeds the cost of a trip from the center of assignment to home, the corpsmember may be required to pay all or part of the difference.

(c) The Center Director shall provide transportation at government expense from center operating funds for escorts for corpsmembers when the center physician recommends that such escort is necessary for medical reasons. The regional office may also approve a Center Director's request for transportation for escorts under other extraordinary or emergency situations such as accompanying the remains of deceased corpsmembers.

(d) Regional offices may authorize transportation at either government or corpsmember expense:

(1) When the corpsmember is AWOL and requests transportation to return to the center or to be terminated and to return home; and

(2) From home to the center of assignment for readmittees who received medical terminations or have been honorably separated from the Armed Forces subsequent to Job Corps enrollment.

(e) Regional offices or centers, whichever authorizes government travel, shall submit cost transmittal sheets for each movement to the national office.

(f) Screening agencies shall arrange for a staff member or other responsible adult to accompany corpsmembers from their residence to the point of departure for a center as given in the travel itinerary. They shall also return the Transportation Requests, Meal Tickets, and carrier tickets of all applicants who do not depart for a center within five working days of the scheduled date of departure, except in the case when a travel delay has been approved by the regional office.

(g) The Center Director shall:

(1) Provide transportation for all arriving corpsmembers from the final carrier terminal or stop to the assigned center;

(2) Provide transportation for all authorized outgoing travelers from the center to the initial carrier departure terminal or stop;

(3) Provide all travelers with essential information, instructions and explanations necessary for a successful trip and arrival;

(4) Provide travelers with necessary funds to cover incidental travel expenses should this be necessary. Such expenses shall be provided from the center imprest or petty cash fund, without regard to whether the regional office or the center makes the transportation arrangement;

(5) Establish and maintain systems necessary for the control of stock distribution and accountability for government transportation requests and meal tickets to safeguard against improper or unauthorized use;

(6) Insure the return of all unused government transportation requests, meal tickets, carrier tickets, Treasury checks, travel funds, and travel documents for cancellation and processing for refunds; and

(7) Provide transportation to and from home for corpsmembers who live in the same locality as the center, e.g., nonresidents, when required to do so by the center's contract.

(h) In all cases, Standard Government Travel Regulations shall apply except as otherwise provided by contractual or other agreement. Instructions for the completion and distribution of all forms necessary for carrying out this section shall be found in the Job Corps Forms Preparation Handbook.

§ 97a.40 Placement and job development.

(a) The overall objective of all Job Corps activities shall be to enhance each corpsmember's employability and to effect the successful placement of each corpsmember. The placement of corpsmembers shall be the primary responsibility of placement agencies. The Center Director shall share in this responsibility, by preparing an employability development plan for each corpsmember, by training corpsmembers for placement readiness, and by directly placing corpsmembers when feasible.

(b) Placement efforts shall concentrate on jobs related to a corpsmember's vocational training, on military enlistment when this is the corpsmember's choice, or on the location of other educational and/or training programs including college, which are suitable to the terminated corpsmember's needs.

(c) In their placement efforts, centers and placement agencies should use the Federal Bonding Program, if appropriate, as well as public service employment programs which provide for special consideration in placing former trainees of manpower programs.

(d) Placement agencies shall operate under contracts negotiated with or grants provided by the regional offices which shall establish placement goals. Such contracts or grants shall be with State employment security agencies whenever possible (section 412(b)). All placement agencies shall:

(1) Continue placement efforts for all terminees with priority given to program completers and those with the longest length of stay in Job Corps until such time as: (i) A suitable job or other placement has been made and verified;

(ii) All reasonable efforts to place the corpsmember have been exhausted; or

(iii) The former corpsmember refuses placement efforts in his or her behalf;

(2) Mobilize community resources and establish linkages with other agencies such as CETA Prime Sponsors, educational institutions and Armed Forces recruitment agencies to help in the placement of former corpsmembers in the provision of support necessary to placement retention, and in their adjustment to community life;

(3) Notify terminated corpsmembers when their readjustment allowances are received in the placement office, and require the corpsmembers to pick them up in person whenever possible;

(4) Conduct an outreach program to locate and assist all unplaced corpsmembers who do not appear at the placement agency; and

(5) Submit forms to regional offices reporting on the results of placement efforts for each corpsmember pursuant to the Job Corps Forms Preparation Handbook.

(e) Unions which train corpsmembers under contract to Job Corps shall be responsible to place program completers in apprenticeship programs or training related jobs whenever feasible.

(f) Center placement responsibilities shall include:

(1) The development of a plan for developing placement readiness and placement possibilities which shall be updated as necessary and maintained by the Center Director. The plan shall include:

(i) The geographic areas to be covered by center placement efforts;

(ii) The center's method for developing and up-dating an employability development plan for each corpsmember, covering the total period of his or her enrollment;

(iii) Center plans for the development and implementation of linkages with such groups as local employers, employer organizations, unions, CETA prime sponsors and State employment service agencies;

(iv) The center system for identifying and counseling corpsmembers with college potential; and

(v) For contract centers, the center's goals for the placement of corpsmembers within the organizational structure of contract center operators;

(2) Counseling corpsmembers to relocate, after obtaining approval of a responsible parent or legal guardian in the case of corpsmembers who have not reached the age of majority, when placement in training related jobs is unlikely in the individual's home community or when better opportunities are available elsewhere.

(3) Completion and distribution of all placement forms pursuant to instructions in the Job Corps Forms Preparation Handbook.

Subpart E—Center Operations

§ 97a.50 Reception and orientation.

(a) The Center Director shall design and implement a reception and orientation program, with flexible scheduling aimed at keeping each new corpsmember meaningfully occupied at all times. The program shall contain at least the following:

(1) Arrangements for center staff to meet new corpsmembers at the time and place they are scheduled to arrive;

(2) Prompt notification of the regional office and of parents or guardians of the safe arrival of individual corpsmembers, or of delays, changes of schedule, or unusual or emergency situations;

(3) A description of the purpose and goals of Job Corps;

(4) Assignment to living quarters for residential trainees and the issuance of initial supplies, advance living allowances, and clothing;

(5) A complete tour of the center for both residents and nonresidents;

(6) Introduction to appropriate staff members, and, when feasible, the assignment of experienced corpsmembers to assist and advise newcomers;

(7) Distribution of the Corpsmember Handbook and discussion of its contents, particularly the systems of incentives and discipline, allowances and allotments, and the rights and responsibilities of corpsmembers;

(8) A cursory physical examination within the first 24 hours of arrival;

(9) A description of each of the vocational training programs offered at the center, including information about the occupational exploration program;

(10) An introduction to health services and the Health Education Program;

(11) Administration of the RJS1 reading and MJS1 mathematics tests to all corpsmembers to determine entry levels in education;

(12) Exposure to all recreation/avocational programs on center and the development of an individual participation plan in these for each corpsmember; and

(13) A minimum of one individual and one small group counseling session for all new corpsmembers during their first week on center to alleviate anxieties, correct misconceptions, and answer questions.

§ 97a.51 Corpsmember handbook.

(a) Each center operator shall develop a Corpsmember Handbook for distribution to all corpsmembers which shall be approved by the regional office prior to publication or revision. Technical guidance materials and sample Corpsmember Handbooks shall be made available on request from regional offices. The handbook shall include at least the following:

(1) All basic center rules and regulations along with possible penalties for infraction and an identification of those responsible for enforcing such rules and imposing such penalties;

(2) The method for corpsmember participation in modifying rules and regulations;

(3) The incentives and awards system for positive behavior and achievement;

(4) A description of the disciplinary system, including the role of elected corpsmember councils, the center standards officer, and the center review board;

(5) A statement about the corpsmember's right to appeal, and appeal procedures;

(6) Information concerning the center's basic schedule of activities;

(7) Available health and health related services and programs including information about Federal Employee's Compensation benefits;

(8) Leave, pass, allowances and allotments;

(9) A description of the corpsmember government and leadership programs and an encouragement to participate in them;

(10) Information on activities in nearby communities;

(11) The center facilities layout; and

(12) Limitations on political activities.

§ 97a.52 Job Corps basic education program.

(a) Operators of Job Corps centers shall establish and maintain the Job Corps education program. Centers are encouraged to supplement and to coordinate the material and instruction for each corpsmember with his or her individual vocational program. Classes shall be small enough to allow for individual tutoring.

(b) Center operators shall provide the following educational courses:

(1) *Reading and language skills.* The basic Job Corps reading program shall be outlined in a Reading Handbook, to be issued by the Director, Job Corps, and shall be used by all centers. It shall consist of three major segments: beginning reading, covering literacy skills from zero to the equivalent of school grade 3.4; graded reading, covering skills from 3.5 to 7.4; and advanced reading, covering 7.5 and above. Each of the major reading segments shall contain multiple graduated skill levels. A supplementary language and study skills program shall be provided as needed to enhance employability of individual corpsmembers. Such a supplementary program shall include at least speech im-

provement, vocabulary skills, grammar and usage, reference and study skills, and letter writing;

(2) *Mathematics.* The Job Corps basic mathematics program shall be described in detail in a Mathematics Handbook which shall be issued by the Director, Job Corps, and which shall be used by all centers. The program shall follow a skills sequence beginning with whole numbers operations and shall include fractions, measurements, decimals and percentages, as well as personal and consumer math. Instruction shall combine programmed workbooks and computational exercises;

(3) Each Job Corps center shall offer the Job Corps Advanced General Education Program to prepare eligible corpsmembers for the American Council on Education Tests of General Educational Development (GED). The use of supplementary materials, particularly in mathematics, is encouraged. Qualifications for entry into the Advanced General Education Program shall be a skills level at or above that required for completion of the basic reading and math program. Operators shall make arrangements with local testing agencies, usually State Departments of Education, for administration of GED tests, and shall pay fees charged by such agencies when the corpsmember taking the test is currently enrolled. For all examinees who make qualifying scores, the center shall initiate application to the appropriate State for high school equivalency certification. (Section 408(c));

(4) *World of Work.* Each Job Corps center shall conduct a World of Work program for all corpsmembers that develops constructive work attitudes and employability skills. This program shall follow the format of the basic program developed by the Director of Job Corps. The centers may augment this with other materials. The program shall include units on job attitudes, sources of job information, job application forms, interviewing, consumer education, and a final unit on exit readiness. Vocational instructors shall serve as consultants on structuring the World of Work course, in coordination with the education, health, and residential living staff; and

(5) *Health education.* A comprehensive health education program shall be provided to all corpsmembers as soon as possible after enrollment. Coordination among the center staff shall be arranged by the Center Director when responsibility is divided for different types of health education training. Sufficient time shall be scheduled to see that corpsmembers complete at least the following subjects, for which curriculum guidance shall be provided by the national office:

(i) Introduction: "The Importance of Health Maintenance;"

(ii) "Nutrition;"

(iii) "Dental Health;"

(iv) "Obtaining Health Care;"

(v) "Love, Sex and The Family;"

(vi) "Reproduction;"

(vii) "Venereal Disease;"

(viii) "First Aid;"

(ix) "Emotional First Aid;" and

(x) "Drugs and Their Misuse."

(c) Center Directors shall provide the following courses under the special circumstances noted:

(1) *Driver education.* Trainees in vocations where the possession of a driver's license is essential for employment shall receive driver education, and shall be given first priority in course enrollment. Those who will need to drive to and from work shall have second priority. The program shall be designed to meet the State licensing requirements for classroom and/or on the road training of the State in which the center is located. Centers shall pay the cost of such licenses for corpsmembers who qualify for them. Driver education trainees shall be qualified for Federal licenses in all cases in which they drive such vehicles; and

(2) *Bi-lingual programs.* Selected contract center operators shall develop and maintain bi-lingual programs for persons of limited English speaking ability when such persons constitute a significant portion of their corpsmember populations. Guidelines to assist centers in the development of such programs are available from the national office. Such centers shall be selected by regional offices, in consultation with the national office, and provision for such programs shall be included in their contracts. Regional offices shall arrange for the assign-

ment of selected applicants needing bilingual programs to the centers where such programs are available.

(d) Avocational courses and services for corpsmembers should include a structured program of physical education, including rules, techniques, and practice in major sports. Center Directors are encouraged to schedule it after hours whenever competent instructors are available (section 408(a)).

§ 97a.53 Vocational training.

(a) All center operators shall provide individualized vocational training for all corpsmembers. Such training shall be designed to develop the specific skills necessary for placement in the vocation for which the corpsmember is being trained.

(b) All center operators shall use training achievement records and occupational training guides which shall be developed by the Director, Job Corps. Other Job Corps approved training guides or records, such as those developed by various unions to establish entrance requirements into apprenticeship programs, may also be used in lieu of Job Corps developed achievement records.

(c) Training shall be provided either through classroom and shop/laboratory programs, or on work projects, or both. Work experience shall be provided whenever feasible (section 408(c)).

(d) Initial selection of the nonunion vocational training courses for contract centers shall be negotiated and written into contract requirements, subject to prior national office approval in the case of centers with multi-regional input. In the case of federally operated centers, initial selection of the nonunion vocational offerings shall be approved by the national office, based upon requests submitted by the Federal operator. All union training programs, and modifications thereto, shall be contracted by the national office, after consultation with the appropriate regional office and/or Federal agency.

(e) Any changes in nonunion vocational offerings and training curricula at federally operated centers and at those contract centers which have multiregional input shall require the approval of the national office. Changes at contract centers which have input only from the region having jurisdiction over the center shall be approved by the appropriate regional office unless additional funds are required to make such changes, in which case national office approval is required.

(f) The request for changes in vocational course offerings shall include the vocational offerings to be added or deleted with occupational code; any changes in number of training spaces in other vocational offerings which the change would effect; available wage and placement data which justify the change; and cost data, including equipment, materials and supplies, space needs, renovation required, instructors needed, and any other factors which the Center Director estimates may have an impact on the center budget.

(g) Criteria for initial selection and subsequent changes in center vocational course offerings shall be the degree of placement opportunities and the potential for upward mobility.

(h) Center Directors shall see that all vocational training projects comply with the applicable provisions of the Davis-Bacon Act, 40 U.S.C. 267a-5.

(i) Job Corps shall not establish vocational training programs which require no prior skill or training to obtain a job. (Section 408(a)).

§ 97a.54 Occupational exploration program.

An occupational exploration program shall be provided by all centers for each coorpsmember, unless the individual has already chosen a vocation and is qualified for entry into training. The program shall include at least:

(a) Classroom presentation of sufficient length to cover the nature and requirements of the training in each vocational program offered by the center and related job information, e.g., wages, hours, working conditions, safety requirements, employment opportunities, union requirements, training, and entry qualification;

(b) Structured, hands-on job experience in each available training program in which the corpsmember expresses interest, to last for the period of time necessary to achieve an understanding of what the training is like; and

(c) Placement of each corpsmember in a vocational training program no later than 30 calendar days from the date of arrival on center, unless an exception to this rule is allowed in an individual case by the regional office.

§ 97a.55 Off-center training.

The Center Director should develop off-center non-professional vocational training opportunities for those corpsmembers who need training in vocations not offered on center either because of the small number of corpsmembers requiring such training or because of cost benefit considerations. Requests for off-center training involving five or more slots at a specific training site shall be submitted to the regional office for approval. When Job Corps has not approved a training achievement record for such vocational training, one shall be developed, either before or after the training begins, and approved by the regional office, which shall send an information copy to the national office (section 408(b)).

§ 97a.56 Scheduling of training.

The amount of time appointed to each corpsmember's education and vocational training shall be determined by the maximum benefits system pursuant to § 97a.81.

§ 97a.57 Certification and/or licensing.

Whenever feasible, the operator shall make arrangements for the certification and/or licensing of corpsmembers in those occupational areas for which this is required for employment or will enhance employment. Training provided should enable the corpsmember to obtain such certification or licensing in the State where he or she will seek employment.

§ 97a.58 Purchase of vocational supplies and equipment.

(a) When the possession of tools of the trade, vocational clothing or other equipment is a prerequisite to employment, centers may elect to develop plans for the low-cost sale of such tools and equipment to corpsmembers. Vocational instructors for both union and nonunion programs shall approve the selection of tools and equipment to be provided. Such plans shall be in writing and shall contain the following information:

(1) Vocational offering and occupational code;

(2) The number of corpsmembers normally engaged in this vocational offering at the center;

(3) The number of program completers per month; and

(4) A list of required tools and other equipment, including the price of each item, the total price of tools and equipment needed by each corpsmember for each vocational offering and the source of supply. The center shall screen all potential sources of procurement, government and private, to get the best quality for the least cost.

(b) When such a plan involves any anticipated additional center cost, the center shall ask for regional office approval prior to the plan's implementation.

(c) In centers with such plans, corpsmembers shall be advised of the opportunity to purchase vocational tools and equipment at reduced costs early in their vocational training programs.

§ 97a.59 Work experience.

(a) Center Directors shall emphasize and implement programs of work experience for corpsmembers through center program activities or through arrangements with employers (section 407(a) of the Act). Work experience training shall be under actual working conditions and should enhance the employability, responsibility and confidence of corpsmembers. All work experience shall be relevant to the individual corpsmember's vocational training. Such work experience shall conform to the applicable provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. 201-19.

(b) Center Directors shall observe the following limitations in establishing work experience programs:

(1) Corpsmembers shall only be assigned to work meeting the safety standards of § 97a.115;

(2) The objects produced or services rendered on the center shall not be sold in the community unless the Center Director is satisfied that such products or services are not readily available from private sources in the area. Such work or services may be sold to corpsmembers or employees at cost;

(3) Centers shall not assign corpsmembers to work experience involving the construction, alteration, and repair of buildings or projects if such work is customarily and historically performed under Federal contracts or grants valued at $2,000 or more;

(4) Work experience programs without pay may be arranged with any Federal, State or municipal agency, but only if the work is not covered by the Fair Labor Standards Act;

(5) Any work experience arranged for employment not covered by the Fair Labor Standards Act shall have prior regional office approval.

(6) When work experience with pay is arranged by the Center Director, the corpsmember:

(i) Shall be considered a joint employee of the Job Corps and the work experience employer;

(ii) May be considered to be receiving in Job Corps benefits such as room, board, clothing allowances, and living allowances the equivalent of up to 25 hours per week of the FLSA wages for up to six weeks;

(iii) After six weeks, shall receive at least 25 percent of the applicable FLSA wage for up to 25 hours work per week; and

(iv) Shall always receive the applicable FLSA wage for any more than 25 hours per week worked.

§ 97a.60 Leisure time employment.

A Center Director may authorize gainful leisure time employment of corpsmembers as long as such employment does not interfere with required scheduled activities.

§ 97a.61 Health care and services.

(a) The center operator shall provide for all corpsmembers a comprehensive health program from admission until termination from the Job Corps (section 408(a) of the Act). The program shall include at least:

(1) Routine medical, dental, and mental health care, including a daily sick call or open appointment system, and any necessary specialist referrals and/or consultations, and written standing orders for on center infirmary care and written arrangements for off center in-patient care;

(2) Ready access to emergency medical, dental, and mental health care on a 24-hour basis, including first aid on center which shall be provided by a staff member with a valid Red Cross first aid certificate or its equivalent;

(3) Qualified personnel, adequate facilities, necessary equipment, supplies and transportation for routine and emergency medical, dental, and mental health services; and

(4) Environmental health services pursuant to § 97a.116.

(b) The Center Director shall obtain prior written consent from a parent or legal guardian of corpsmembers who are under the age of majority each time he or she requires other than routine medical or surgical treatment. The consent form obtained by the screening agency prior to enrollment shall serve as authorization for routine health care. In emergency situations, the Center Director may make an exception to the requirement for consent when a parent or guardian of a corpsmember under the age of majority cannot be reached, and this is so documented in the corpsmember's health record.

(c) Except in emergency situations, the Center Director shall obtain approval from the regional office prior to authorizing any hospitalization which health professionals estimate will exceed 30 days in duration or $1,000 in cost.

(d) Job Corps shall not normally pay for any health care services incurred by a corpsmember while on leave or pass unless these have been previously authorized by the Center Director or physician. In the event of an emergency, when authorization cannot be obtained prior to provision of necessary services, the Center Director may later elect to pay such costs.

§ 97a.62 Physical standards and medical evaluations.

(a) Center physicians shall provide current signed and dated standing orders, which shall be kept in the center's health unit, indicating the care and procedures which shall be carried out by center health personnel. These orders shall include at least guidance concerning emergency procedures, procedures which can be performed by nonphysician personnel, care of commonly encountered health conditions, and administrative procedures.

(b) The center physician shall also provide a set of written standing orders for the guidance of nonhealth personnel when dealing with health emergencies and minor illnesses when center health staff is not on duty.

(c) Within the first 24 hours of arrival on the center, the Center Director shall see that each corpsmember has a cursory medical inspection to determine if any hazardous health condition exists.

(d) A Report of Medical History form shall be completed for each corpsmember and each corpsmember shall receive a definitive medical examination by a physician or a qualified paraprofessional designated by a physician within 2 weeks of arrival on center. The results of this examination shall be recorded on the Report of Medical Examination form.

(e) The center physician shall arrange for any necessary specialized testing, examination, treatment, and/or consulation whenever a health problem is suspected.

(f) The center physician shall arrange for any necessary inpatient care, or recommend an alternative disposition if such inpatient care is not practicable.

(g) The Center Director shall arrange for a physical evaluation for each corpsmember who is to be transferred or who is being considered for medical termination.

§ 97a.63 Ocular care.

The Center Director shall arrange for the referral to an optometrist or ophthalmologist of corpsmembers with simple uncorrected refractive errors evidenced by a visual acuity of 20/40 or worse on the Snellen chart or with scores of J6 or worse on the Jaeger chart or 50 percent or worse in visual efficiency. The center shall furnish glasses as needed. Only in cases of refractive error when the improvement in vision from contact lenses would be substantially greater than from glasses shall contact lenses be provided.

§ 97a.64 Immunization.

(a) Centers shall provide for a basic immunization series and for any necessary prophylactic immunization and reimmunization of corpsmembers, commencing no later than the entrance medical examination, and may also immunize center staff and their families who share the same environmental exposure. Corpsmembers may be exempted from any immunization by the center physician for health or religious reasons. Corpsmembers who arrive with documented current immunization shall also be exempted. A record for each person immunized shall be kept on the Job Corps Immunization Record form.

(b) The Director, Job Corps, shall periodically issue standards for immunization practices in Job Corps. These standards shall be based upon recommendations of the Center for Disease Control of the Department of Health, Education, and Welfare, and shall be adhered to by centers.

§ 97a.65 Communicable disease control.

(a) Corpsmembers shall not handle food or engage in food preparation activities until after they satisfactorily complete the entrance medical examination.

(b) The Center Director shall arrange for the immediate examination by a physician or a qualified paraprofessional designated by a physician of all appropriate center personnel and corpsmembers when any case of hepatitis, meningitis, tuberculosis, or any significant number of cases of gastroenteritis or other serious communicable disease occurs.

(c) The Center Director shall inform State and local health departments of all cases of reportable diseases, including gonorrhea and syphilis, in accordance with State and local laws. Center physicians shall deal with all cases of venereal disease in accordance with the current recommendations of the Center for Disease Control, U.S. Department of Health, Education, and Welfare.

(d) Rabies prophylaxis and tetanus wound management shall be given in accordance with the standards of the Center for Disease Control.

§ 97a.66 Dental care.

(a) The Center Director shall arrange for an oral inspection of each corpsmember at the same time as the cursory physical examination.

(b) The Center Director shall arrange for each corpsmember to have a Class II dental examination as described by the American Dental Association between the 90th and 120th day after enrollment. Routine dental care beyond the examination is voluntary on the part of corpsmembers, except that the center physician or dentist shall require necessary treatment upon the identification of a communicable condition which threatens the health of the corpsmember or others;

(c) Dental X-rays shall be authorized only by a dentist, and pregnant corpswomen shall not be x-rayed without consultation with the center physician. On-center X-ray equipment shall comply with applicable Federal and State laws regarding leaded walls, radiation leakage, and protection of personnel.

(d) The center shall provide for restorative treatment for corpsmembers with the priority of such treatment based on the condition's urgency. The assignment of such priorities shall be made at the time of the initial dental examination.

§ 97a.67 Pregnancy.

(a) Center Directors shall keep pregnant women in Job Corps through the seventh gestational month if they desire to stay and if there is a good probability based on a functional evaluation that they can complete a defined segment of the program by that time.

(b) Center Directors shall arrange for the provision of comprehensive support services to pregnant corpsmembers including:

(1) All necessary pre-natal and perinatal care including hospitalization and emergency delivery, until medical termination with an appropriate referral; and

(2) Comprehensive pregnancy counseling including the possibility for Job Corps retention, termination and readmission practices, and the alternatives for dealing with pregnancy.

(c) Only after obtaining signed consent from a corpswoman who has reached the age of majority shall any individual notify the person legally responsible for a corpsmember or anyone else that she is pregnant.

§ 97a.68 Mental health.

(a) The Center Director shall provide a mental health program, to include the services of a professional consultant for the center. Such consultant's responsibility shall be primarily to give training and consultation to those staff members who are in direct contact with corpsmembers. However, the consultant, with the concurrence of the Center Director, shall also provide or arrange for direct services to corpsmembers such as mental health evaluations and psychological testing when necessary.

(b) The Center Director, in consultation with the regional office, shall determine how much on-center time shall be spent by the mental health consultant in on-going staff consultation and training, and how much in individual consultations with corpsmembers.

(c) In the event of a mental health emergency, when a corpsmember's behavior endangers his or her own life or the lives of others, the Center Director may request the assistance of local medical and/or law enforcement personnel. If restraint is required, the Center Director shall allow only that amount of physical restraint necessary to prevent the corpsmember from harming himself or herself or others or from damaging property. No corpsmember shall be physically restrained for more than one hour without an examination by and the approval of a physician or mental health professional.

(d) When a corpsmember is taken into custody by the police and his or her behavior indicates possible emotional disturbance, the Center Director shall make every effort to arrange for prompt mental health evaluation and treatment.

(e) The center shall not provide long-term psychiatric treatment to a corpsmember when this treatment would require significant expenditure of program funds or staff time. Corpsmembers who need this kind of care shall be referred to adequate psychiatric facilities at no cost to Job Corps and shall be medically terminated.

§ 97a.69 Drug use and abuse.

Each Center Director shall see that corpsmembers who have problems related to drugs, including alcohol, are provided counseling or other therapeutic assistance. Each Center Director shall also arrange to provide corpsmembers and staff members with current and accurate information on the effects of such drug misuse.

§ 97a.70 Sex related issues.

The center shall provide counseling and medical services for corpsmembers whose sexual behavior interferes with their ability or the ability of others to participate in the Job Corps program. When resolution of such problems is not possible within the Job Corps setting, corpsmembers with such problems shall be medically terminated.

§ 97a.71 Death.

If a corpsmember dies, the center shall:

(a) Promptly notify the next of kin by telephone, when feasible, and by telegram, with confirmation requested;

(b) Delay public announcement or issuance of a news release concerning the death until next of kin are notified;

(c) Notify the regional and national health offices by telephone or wire within 6 hours of the center's knowledge of the death, giving pertinent personal vital statistics and related information about the death;

(d) Notify the appropriate District Office of Workers' Compensation Programs of the death and the circumstances surrounding it, including whether the death occurred during performance of duty, and file appropriate forms with that office (section 416(a)(2) of the Act).

(e) Inform the next of kin of any possible benefits which may be available from Federal Employees' Compensation if death occurred during the performance of duty. If it did not so occur, notify them that the government shall pay only for expenses involved in the preparation and transportation of the remains to a mortuary in the area selected by the next of kin;

(f) Consult the decedent's family as to final disposition of the remains before any final action is taken in this regard; and

(g) If the next of kin refuses to accept the remains, arrange for burial at a site close to the center and at a cost not to exceed the amount authorized in section 8134(a) of the Federal Employee's Compensation Act (FECA), Pub. L. 93-416 as amended.

§ 97a.72 Reporting critical medical situations.

The Center Director shall immediately report critical medical situations to the regional office with an information copy to the national health office, as well as to the local health officer in the case of communicable disease. Such critical situations shall include at least the following:

(a) Any significant infectious disease which may be transmitted from person-to-person such as chancroid, diphtheria, hepatitis, meningitis, mumps, poliomyelitis, primary or secondary syphilis, tuberculosis, and typhoid or paratyphoid fever;

(b) Any significant infectious disease or disease due to an infectious agent which is generally transmitted from other than human sources such as botulism, rabies, Rocky Mountain Spotted Fever, or tetanus;

(c) Any outbreak or epidemic of an infectious disease such as conjunctivitis or kerato-conjunctivitis, gastroenteritis including food poisoning, scarlet fever, rubella or rubeola, and streptococcal sore throat;

(d) Severe reactions to immunization or administration of medication; and

(e) Serious injury, death, and conditions likely to result in death.

§ 97a.73 Residential support services.

(a) All Center Directors shall provide for residential support services structured as an integral part of the overall training program. This service shall include a secure, attractive physical and social environment, seven days a week, 24 hours a day, designed to enhance learning and personal development. The goal of such services shall be to produce an atmosphere which promotes corpsmember productivity without extravagance and luxury. All corpsmembers, including non-residents while they are on center, shall be provided with the full program of services.

(b) Centers shall operate residential facilities which are well maintained and which comply with applicable Federal, State and local safety, health and housing codes for multi-purpose group residences. The number of corpsmembers assigned to each living area should be relatively small in order to encourage the growth of self discipline and of supportive group relationships. In residential facilities:

(1) Bathrooms and showers shall be brightly lit and clean;

(2) Dormitory facilities shall include multi-purpose room(s) sufficient for the needs of corpsmembers;

(3) Furnishings shall include good beds, linens, blankets, adequate locked storage space for each corpsmember's belongings, comfortable chairs and work/study areas, television sets, good lighting, and all housekeeping tools necessary for maintenance, including washers, dryers, and ironing facilities; and

(c) Corpsmembers shall provide necessary housekeeping and participate in other center maintenance work activities such as kitchen and dining room chores (section 408(a) of the Act).

(d) Residential advisors or responsible substitutes shall adequately supervise each residence during hours when corpsmembers are present and maintain a running log of all significant events. They shall assist corpsmembers by:

(1) Fostering a dormitory atmosphere conducive to corpsmember personality and character development including an understanding of the cultural backgrounds, life styles, attitudes, outlook, and needs of their fellows;

(2) Maintaining order and a secure atmosphere in the dorms, and by operating a system which accounts for the whereabouts of corpsmembers assigned to their dormitories during and after class hours;

(3) Providing individual and/or group guidance;

(4) Conducting periodic reviews of progress in corpsmembers' personal, social, placement, behavior, and leadership development;

(5) Responding promptly and appropriately in the event of illness, injury, emotional trauma, arrest, trouble at home, or maladjustment to center life;

(6) Encouraging participation in recreation/avocational activities and in corpsmember government; and

(7) Conducting periodic dormitory meetings for purposes of mutual information sharing (section 407(a)).

§ 97a.74 Recreation/avocational programs.

(a) The center operator shall develop a recreation/avocational program to be carried out, for the most part, after class hours and on weekends and holidays.

(b) Corpsmembers shall participate in the planning and implementation of such activities.

(c) All recreation/avocational center programs shall include the following components whenever feasible:

(1) Cultural events;

(2) Sports and physical fitness;

(3) Arts and crafts;

(4) Community activities;

(5) Movies, live shows, and special events; and

(6) Reading and reference materials, including a suitably stocked library, either on or off center, which is accessible on weekdays, evenings, and weekends.

(d) Each Center Director shall provide supervision, instruction, and facilities, either on or off center, for carrying out this program, utilizing corpsmember recreational aides whenever feasible.

(e) Tools, sports equipment, athletic clothing and related items shall be lent to corpsmembers on an as-needed basis and shall be returned to the center.

(f) The sale for individual corpsmember profit of arts and crafts objects made with center-provided materials shall be prohibited. Such objects may be sold when the profits benefit the Corpsmember Welfare Association.

§ 97a.75 Laundry, mail and telephone service.

(a) Center operators shall provide adequate laundry services for corpsmembers, who shall be encouraged to launder, iron and repair their personal clothing.

(b) The Center Director shall establish a system for prompt delivery of mail received by corpsmembers in a manner which protects the confidentiality of such mail, and shall arrange for a sufficient number of conveniently located pay telephones for corpsmember use.

§ 97a.76 Counseling.

(a) Each center operator shall establish an ongoing structured counseling program which shall be focused on individual corpsmember needs. It shall be conducted by counselors, residential advisors and other staff as appropriate, under the cognizance of the professional counseling staff.

(b) Counseling services shall cover at least four basic areas:

(1) Personal and social development;

(2) Education;

(3) Vocational training and placement; and

(4) Periodic assessments of each corpsmember's progress.

(c) The Center Director shall establish counselors' work schedules so that counselors are available to corpsmembers after the education/vocational day into the early evening hours. Counselors' offices shall be so located on center that accessibility to the corpsmember population is facilitated.

(d) Individual and small group counselling shall be made available to all corpsmembers, both on a regularly scheduled and on an as-needed basis.

(e) Each counselor shall meet at least once per month with those residential advisors serving the same corpsmember group to assess each corpsmember's progress, identify problems, and develop a consistent and fair approach in their dealings with each corpsmember.

(f) A confidential counseling record for each corpsmember shall be maintained only in the counselor's office and shall include a brief running account of all significant counseling contacts (sections 408(a) and 412(a) and (b)).

§ 97a.77 Intergroup relations program.

Every Job Corps center shall conduct a structured intergroup relations program designed to reduce prejudice, prevent discriminatory behavior by staff and corpsmembers, and increase understanding among racial/ethnic groups. Technical assistance materials shall be made available by the Job Corps to assist in the development of this program. The program should include at least:

(a) Information for corpsmembers about the history and contributions of various racial/ethnic groups;

(b) Small group discussions about specific kinds of behavior or speech which may cause tension or misunderstanding among racial/ethnic groups; and

(c) Planned activities for leisure time relating to the customs and interests of a variety of racial/ethnic groups.

§ 97a.78 Incentives system.

(a) Each center shall establish and maintain its own incentives system for corpsmembers. Incentives shall include at least increases in living allowances, pursuant to § 97a.81, special awards, and prizes, such as trophies and certificates for outstanding achievement in specific areas.

(b) The corpsmember government shall be involved in developing, operating, and evaluating the effectiveness of the system.

(c) Some incentives shall be geared to the improvement by individual corpsmembers in their own level of achievement rather than on their success in competition with other corpsmembers.

§ 97a.79 Corpsmember government and leadership programs.

(a) Each center shall establish, with maximum corpsmember participation, an elected corpsmember government.

(b) Each center shall also establish and maintain a structured corpsmember leadership training program with staff advisors (section 401).

§ 97a.80 Corpsmember welfare associations.

(a) The Center Director shall develop a plan for the organization and operation of a corpsmember welfare association, to be run by an elected corpsmember association council with the help of a staff advisor. This plan shall include the proposed method of establishment and operation, use of concessions, sources of revenue, and an accounting system. Prior to implementation the Center Director shall submit the plan to the regional office for approval, except for those centers operated by Federal agencies, which shall submit the plan through their agency channels for approval. The agency shall submit a copy of its approved plan to the ETA regional office.

(b) The plan shall conform to the following requirements:

(1) The Center Director shall establish a welfare association fund, to be managed and controlled by the association council. Revenues may come from such sources as snackbars, vending machines, disciplinary fines, and pay telephones. No federally appropriated funds shall be used to operate the corpsmember welfare association's activities;

(2) The corpsmember welfare association council, in consultation with other corpsmembers, shall make recommendations to the Center Director for expenditure of its funds. Center Directors shall allow the funds to be used only to operate activities or make purchases or loans which clearly benefit the corpsmembers; and

(3) The corpsmember welfare association council shall maintain its own accounting system, which shall be subject to audit by the regional office except that Federal agencies which operate centers shall audit their own corpsmember welfare association systems (section 401).

§ 97a.81 Evaluation of corpsmember progress (Maximum Benefits System).

(a) The Center Director shall implement a Maximum Benefits System to evaluate the progress of each corpsmember. The system shall provide for the establishment of Progress/Performance Evaluation Panels (P/PEP). The P/PEP's shall:

(1) Consist of at least one staff member from each of the basic education, vocational training and counseling program areas;

(2) Receive progress evaluation reports from instructors, counselors, residential advisors, and other staff as appropriate in time for each P/PEP's meeting about an individual corpsmember;

(3) Meet initially to evaluate the progress and review the training schedule of each corpsmember within 30 to 45 days after enrollment;

(4) Meet at least every 60 days after the initial evaluation to make periodic assessments of each corpsmember's performance in all program areas;

(5) Have additional meetings with corpsmembers at the corpsmember's request or at the request of a staff member concerning any aspect of the center program;

(6) Arrange, whenever feasible, for the corpsmember to be present at each meeting where his or her case is to be discussed;

(7) Make recommendations already known to the corpsmember involved to the Center Director about such matters as course or scheduling changes, allowance increases, incentive awards, and readiness for entry into the exit program; and

(8) Inform corpsmembers about actions they should take to improve performance and of all recommendations the panel decides to make to the Center Director.

(b) The Center Director shall review the recommendations of the P/PEP; approve, deny, or amend them; and notify the P/PEP and the corpsmember of the decision reached (secs. 408(a) and 412(a)).

§ 97a.82 Food service.

(a) Centers shall provide corpsmembers with meals, which shall be nutritionally well-balanced, of good quality and sufficient in quantity. Military master menus may be used as guides.

(b) The Center Director shall see that food is prepared and served in a sanitary manner. All staff members who handle or prepare food shall meet State or local food handling requirements, whichever are stricter, and be free from communicable diseases as verified by medical examination.

(c) Centers shall charge all noncorpsmembers for food provided to them unless prior regional office approval has been obtained. No funds allocated for corpsmember food shall be used for this purpose. Such charges shall be sufficient to cover the cost of the food and its preparation, and shall be reviewed and approved at least semi-annually by the regional office.

(d) Center Directors shall see that dining areas are pleasant, sanitary and well-maintained.

§ 97a.83 Allowances and allotments.

(a) Centers operated under contract by the Commonwealth of Puerto Rico shall pay all allowances and allotments described in this section directly to corpsmembers or their allottees pursuant to contract provisions.

(b) In all other cases, the Center Director shall arrange for the payment of corpsmember allowances and allotments in the right amounts and at the right times by seeing that:

(1) All forms necessary to authorize such payment are correctly completed and submitted to the U.S. Army Finance and Accounting Center (Finance Center) pursuant to the interagency agreement between the Department of Labor and the Department of Defense. Instructions for completion and submission of these forms shall be found in the Job Corps Forms Preparation Handbook; and that

(2) A system is established at the center for the prompt delivery to corpsmembers of allowance checks received from the Finance Center and for the prompt correction of any errors in the amount of such checks.

(c) Whenever an error is discovered in a form already submitted to the Finance Center, the Center Director shall notify the Finance Center immediately. After termination, if an overpayment is made in a corpsmember's final living and readjustment allowance payment because the center erroneously authorized a readjustment allowance, failed to report monetary advances to a corpsmember which should have been deducted, or delayed the submission of correct forms, the Center Director shall reimburse the amount of the overpayment to the Finance Center. The Finance Center shall send any underpayment discovered directly to the terminated corpsmember.

(d) Pursuant to the interagency agreement, the Finance Center shall make accurate and timely payments and submit reports to the national office.

(e) Newly enrolled and readmitted corpsmembers shall receive an initial monthly living allowance of $30.

(f) Incentive increases in the monthly living allowance, based on time and performance in Job Corps, may be given in increments of $5 per month, up to a maximum of $50 per month. Reductions in the monthly living allowance may be made on the basis of poor performance using the same method, but not below $30 per month (section 409(a)).

(g) Living allowances shall accrue from the date of initial departure for the center to the date of scheduled arrival home, except during periods of AWOL or leave without pay and allowances. Such allowances shall be paid semi-monthly.

(h) The Center Director shall give each newly enrolled corpsmember an allocation for living expenses of $15, to be distributed in amounts of not more than $5 per week from the center's imprest or petty cash fund. Repayments of the initial allocation shall be deducted from the corpsmember's final readjustment allowance check.

(i) Corpsmembers shall also receive a readjustment allowance of $50 for each month of participation in Jobs Corps after their termination from the program if they have remained in the Job Corps for at least 180 days or if they terminate after 90 days as program or maximum benefits completers. In the event a corpsmember dies, receives a medical termination, or enlists in the Armed Forces less than 90 days after enrollment, he or she shall be eligible for the accrued readjustment allowance (section 409(c)). Such corpsmembers shall not be considered program completers.

(j) Center Directors may, after seeing that enough readjustment allowances are in the corpsmember's account, and at the corpsmember's request, pay advances on readjustment allowances to corpsmembers of:

(1) Up to 75 percent of the readjustment allowance to those who are already placed;

(2) Up to $150 to those who are not placed; and

(3) Up to $250 to those departing the center for an employment interview.

(k) Any advances in readjustment allowances which differ from the regulations set forth in paragraph (j) of this section or are requested for health purposes shall have prior regional office approval.

(l) Corpsmembers who are placed prior to leaving the center shall receive the readjustment allowance owed in a lump sum directly from the Finance Center after termination. Corpsmembers who are not placed on jobs prior to leaving the center shall receive any owed readjustment allowance through a placement agency (section 412(e)).

(m) Corpsmembers may authorize a deduction from their monthly readjustment allowance of $5, $10, $15, $20, or $25, which shall be matched by an equal amount from Job Corps funds and sent as an allotment each month by the Finance Center to their spouse or dependent child(ren) if such spouse or dependent child(ren) reside in a State, the District of Columbia, or any other area subject to the jurisdiction of the United States. The screening agency shall verify whether the proposed allottee is a spouse or dependent child of the corpsmember. Only one allotment shall be authorized per corpsmember. Allotments shall be paid for complete calendar months only. The effective date of the allotment shall be the first day of the first full calendar month after application for an allotment (section 409(d)).

(n) The following kinds of deductions shall be made when applicable from a corpsmember's living and/or readjustment allowance provided that at least a $7 earned living allowance per pay period is paid to the corpsmember:

(1) Social security taxes (FICA);

(2) Income taxes;

(3) Fines levied by the Center Director up to $5 per pay period;

(4) The value of transportation documents if these are lost or unused and not returned;

(5) Authorized contributions for an allotment; and

(6) Any indebtedness the youth has charged against the living and/or readjustment allowances.

(o) Corpsmembers who are AWOL shall not be paid living or readjustment allowances for such period (sections 409(a) and (c)).

(p) In the event of a corpsmembers' death, any amount due, including the amount of any unpaid readjustment allowance, shall be paid in accordance with the provisions of 5 U.S.C. 5582 (section 409(c)).

(q) Instructions for completion and distribution of all forms required to implement the provisions of this section shall be found in the Job Corps Forms Preparation Handbook.

§ 97a.84 Clothing.

The center operator shall provide clothing for all corpsmembers by means of a cash allowance and by government issue, in accordance with instructions issued by the national office. Conditions under which clothing shall be provided include:

(a) A cash allowance shall be given to each corpsmember for the purchase of clothing. The national office shall state the amounts to be provided during the first and second years of enrollment, with the second year's allowance being substantially less than the first.

(b) Clothing necessary for vocational training shall be issued to all corpsmembers. Such issue clothing shall remain the property of the government, and, except for expendable or worn-out items and in emergency situations shall be returned to the center by the corpsmember, either on termination or when no longer needed.

(c) Transferring corpsmembers shall take all appropriate issue clothing with them to the new center.

§ 97a.85 Tort and other claims.

(a) Corpsmembers shall be considered Federal employees for purposes of the Tort Claims Act (28 U.S.C. 2671, 2672, 2677-9) (section 416(a)(3)). In the event a corpsmember is alleged to be involved in the damage, loss or destruction of the property of others, or of causing personal injury to or the death of other individual(s), claims may be filed by the owner(s) of the property, the injured person(s), or by a duly authorized agent or legal representative of the claimant to the Center Director. The Center Director shall collect all of the facts and submit the claim for a decision to the Associate Solicitor for Employee Benefits, Office of the Solicitor, Washington, D.C. 20210, except when Federal agencies operating centers have been given responsibility for processing and deciding upon such claims.

(b) Pursuant to section 416(b) of the Act, whenever there is loss or damage to persons or property, which is believed to have resulted from operation of a Job Corps center and to be a proper charge against the government, and such loss or damage is not cognizable under the Tort Claims Act, a claim for such damage may be submitted by the owner(s) of the property, the injured person(s), or by a duly authorized agent of the claimant to the office of the Associate Solicitor for Employee Benefits which shall consider the facts and may settle the claim in an amount not to exceed $500. A claim, for example, may be considered for payment if it arises out of a wrongful act or omission of a corpsmember.

(c) The Job Corps may pay claims to corpsmembers for lost, damaged, or stolen property, up to a maximum of $200 when such loss is not due to the negligence of the corpsmember. Corpsmembers shall always be compensated for losses when they are the result of a natural disaster or when the corpsmember's property is in the protective custody of the Center Director, which shall always be the case when a corpsmember is absent from the center for 24 hours or more. The Center Director shall file such claims with the MA regional office for a determination on the claim and promptly notify the corpsmember and the center of its determination.

(d) Tort claims shall be made on Standard Form 95, The Claim for Damage or Injury form, or a similar document, supported by necessary justification. Instructions for completion and submission of the Claim for Damage or Injury form shall be found in the Job Corps Forms Preparation Handbook. Claims under 416(b) of the Act may be submitted on either Standard Form 95 or another similar document, supported by necessary justification.

(e) When appropriate, the Center Director shall assist corpsmembers to claim against other sources, e.g., from shippers and insurance companies, or through civil court proceedings.

§ 97a.86 Federal employee's compensation.

(a) Corpsmembers shall be considered Federal employees for purposes of Federal Employee's compensation (FEC) pursuant to sec. 416(a)(2) of the Act.

(b) Resident corpsmembers shall be considered to be in the "performance of duty" as Federal employees from the date they leave their homes and begin authorized travel to their center of assignment until the date of their scheduled arrival at the official travel destination as authorized by the Center Director upon their termination from the Job Corps. During this period the youths shall be known as "corpsmembers," and this period shall constitute their period of Job Corps enrollment. During this period corpsmembers shall be considered as in performance of duty at all times, during any and all of their activities, 24 hours a day, seven days a week.

(c) Non-resident corpsmembers shall be considered to be in the performance of duty as Federal employees from the time they arrive at any scheduled center activity or program until they leave such activity or program.

(d) No corpsmember shall be considered as being in performance of duty status if he or she is absent without official authorization (AWOL) or if he or she is on administrative leave without allowances.

(e) In computing compensation benefits for disability or death, the monthly pay of a corpsmember shall be deemed that received under the entrance salary for a grade GS-2 employee, and 5 U.S.C. 8113 (a) and (b) shall apply to corpsmembers.

(f) Compensation for disability shall not begin to accrue until the day following the date on which the injured corpsmember completes his or her Job Corps termination.

(g) Whenever a corpsmember is injured, develops an occupationally related illness, or dies while in the performance of duty, the Center Director shall immediately comply with the procedures set out in the Employment Standards Administration regulations at 20 CFR Chapter I, as amended at 40 FR 6876. The Center Director shall also see that a thorough investigation of the circumstances and a medical evaluation are made, and shall see that required forms are filed with the appropriate Office of Workers' Compensation Programs (OWCP) district office. Application forms and instructions for their completion shall be found in the Forms Preparation Handbook.

§ 97a.87 Social Security.

Corpsmembers shall be covered by Title II of the Social Security Act (41 U.S.C. 401 et seq.) and shall pay applicable federal employment taxes (FICA) on their living and readjustment allowances (section 416(a)(1)).

§ 97a.88 Income taxes.

(a) Corpsmembers shall be subject to income taxes pursuant to the Internal Revenue Code of 1954, (26 U.S.C. 1 et seq.) (section 416(a)(1)). Corpsmembers shall claim the following as income for tax purposes:

(1) The living allowance;

(2) The readjustment allowance, including any portion allocated for an allotment;

(3) The cash clothing allowance; and

(4) The value of government paid transportation provided to and from center for home and emergency leave, and to home after termination.

(b) Corpsmembers shall not be subject to tax for the value of meal tickets and clothing issued to them nor for that portion of the allotment contributed by the government to the allottee.

(c) The Center Director shall see that any forms required to effect income tax deductions and withholding exemptions are completed by the corpsmember. Instructions for completion shall be found in the Forms Preparation Handbook.

(d) Income taxes shall be withheld from the foregoing allowances and benefits if required by the appropriate tax withholding tables and rules.

(e) Wage and tax statements shall be sent to corpsmembers by the Finance Center, pursuant to the interagency agreement.

§ 97a.89 Emergency use of personnel, equipment and facilities.

(a) If Center Directors are requested by public officials to provide emergency assistance when there is a threat of natural disaster, the Center Director may authorize such assistance, after seeking advice from the regional office if he or she wishes such advice. Center Directors may ask corpsmembers to volunteer their services to help in such cases, and shall arrange for any added center expenses consequent to such assistance to be borne by the benefiting organization.

(b) Upon the completion of each emergency project, the Center Director shall submit a summary report of the work done to the regional office.

§ 97a.90 Limitations on the use of corpsmembers in emergency projects.

(a) No corpsmember shall participate in emergency relief:

(1) In connection with labor shortages, strikes, riots, or civil disturbances;

(2) On private property to promote the self-interest of private individuals or groups, except as incidental to authorized emergency work:

(3) If it lasts long enough to detract from his or her educational and vocational training, in which case rotation of corpsmembers should be considered; or

(4) For fire suppression except when the corpsmember volunteers, has completed a fire control training program, is 18 years of age and in good physical condition, is used only in support of compensated fire-fighters, and is paid by the benefiting organization at the same rate as other fire-fighters. Corpsmembers shall not work for a greater number of hours per day than other fire-fighters nor in mopping-up operations after a fire.

§ 97a.91 Corpsmember absences.

(a) Corpsmembers shall accrue annual leave at a rate of 1 calendar day for each pay period during which the corpsmember is entitled to a living allowance for at least 8 days. Accrual shall commence on the day the corpsmember initially departs for a center and end on the date of his or her scheduled arrival home.

(b) Annual leave shall continue to accrue during periods of home, emergency and administrative leave with allowances and shall be suspended only during absences without approved leave and administrative leave without allowances.

(c) Corpsmembers shall not be paid at termination for accrued unused leave.

(d) Corpsmembers may use accrued leave at any time subject to the approval of the Center Director. Annual leave with transportation at government expense, however, shall be allowed only after the corpsmember has spent 6 months in Job Corps, and only once per year of enrollment (section 409(b)).

(e) Corpsmembers shall also be eligible for emergency leaves of up to 12 days each. The Center Director may grant such leave, with transportation at government expense, so that a corpsmember may visit his or her family in case of a death, imminent death, or serious illness or injury, after verification of the emergency. However, if the corpsmember has had a home leave or an emergency leave at government expense within the preceding 6 months, prior approval for the new leave shall be obtained from the regional office. The Center Director may extend emergency leave, after verifying the need, beyond 12 days. Such extensions shall be without allowances.

(f) The Center Director may grant administrative leave to corpsmembers with allowances and transportation at government expense for a period up to 30 days for situations such as:

(1) Securing necessary medical or dental treatment away from the center which has been prescribed by an appropriate health professional;

(2) Being temporarily housed off-center as a precaution against harm or injury to self or others;

(3) Appearing in court as a complainant or witness;

(4) Appearing before a probation or parole board;

(5) Attending or participating in special projects or civic functions; and

(6) Unavoidable transportation delays.

(g) Administrative leave without allowances or government paid transportation may also be granted by the Center Director to a corpsmember for other reasons with the prior approval of the regional office. Such leave shall always be granted to corpsmembers who are absent due to incarceration until termination pursuant to § 97a.36(a)(7), or their return to the center (section 409(b)).

(h) The Center Director may authorize a pass for a corpsmember for up to 72 hours. Such a pass shall not be considered as leave. Transportation shall be at the corpsmember's expense.

(i) The Center Director shall establish and maintain a system which accounts for the whereabouts of each corpsmember at all times. The system shall include a record of excused and unexcused absence from all scheduled activities, passes taken, and all absences from the center, and an accurate leave record, showing leave accrued and taken.

(j) When it is determined that a corpsmember is AWOL, the Center Director shall immediately begin attempts to locate him or her, and shall notify concerned parties such as parents, courts, and the screening agency.

(k) Whenever a corpsmember is absent from the center for 24 hours or more, such corpsmember's personal belongings which remain at the center shall be inventoried and secured by the Center Director.

§ 97a.92 Legal services to corpsmembers.

(a) The Center Director shall make every effort to assure corpsmembers of effective and competent legal representation in criminal cases and in certain civil cases, and to provide additional legal services as needed (section 407(a)). The Center Director shall, whenever feasible, develop a program to assist corpsmembers to obtain free or low-cost legal assistance.

(b) The Center Director shall establish a system for obtaining local attorneys willing to represent corpsmembers facing criminal and civil proceedings. A list of such local attorneys shall be maintained and updated as necessary. The list should include public defender and legal service attorneys.

(c) The Center Director shall see that corpsmembers who are to be interrogated by law enforcement officials as suspects in criminal cases are advised that they may secure a lawyer to represent them during the interrogation. Job Corps shall pay for such legal services if the Corpsmember wants such services.

(d) Job Corps shall help provide legal services for corpsmembers in criminal cases and shall pay for such services in all criminal cases except:

(1) When a corpsmember is AWOL when the offense is committed;

(2) When the corpsmember is arrested for an offense committed before entering Job Corps;

(3) When the corpsmember is charged with a second felony after being convicted of a first felony committed while he or she was enrolled in Job Corps;

(4) When the corpsmember is arrested for a third misdemeanor after conviction of the first two, and legal services were provided by Job Corps in the first two cases;

(5) When a corpsmember is charged with an offense when he or she is on administrative absence without allowances, and while awaiting trial for a former offense.

(6) When the corpsmember refuses to authorize deduction of his or her share of the legal fees from his or her allowances. In this event, the Center Director shall attempt to arrange for legal representation by an attorney appointed by the court.

(e) The Center Director shall immediately report to the regional office all instances in which legal services are denied under paragraph (d) of this section and may request a waiver of the requirements of paragraph (d) by the regional office.

(f) After the corpsmember freely selects an attorney, the Center Director shall immediately inform the attorney that the corpsmember is a member of the Jobs Corps, that the Job Corps wishes the corpsmember to receive adequate legal representation and, if possible, pretrial release from custody, and that the client is the corpsmember, not the Job Corps, although payment of fees will come from the Job Corps.

(g) The Job Corps shall compensate attorneys in criminal cases for reasonable expenses. Compensation shall be at the rates set forth in the Criminal Justice Act of 1964 (18 U.S.C. 3006A(d)), except that compensation shall not exceed $1000 in felony cases nor $400 in misdemeanor cases unless additional payment is approved by the regional office. When an attorney represents two or more corpsmembers at the same time, payments per hour shall be prorated among the corpsmembers. Attorneys shall bill regional offices directly. Procedures for billing, and authorization of expenditures for private investigation, expert witnesses, special tests, etc., shall be established by agreement between the center operator and the regional office.

(h) The corpsmember's share of the attorney's fees in criminal cases and in civil cases other than commitment proceedings shall be computed by the regional office and shall be deducted from allowances at the rate of $5 per hour for the time spent by the attorney in court and $3 per hour out of court, up to a maximum of $50. No legal costs shall reduce the corpsmember's living allowance below $7 per pay period.

(i) In exceptional circumstances, Job Corps may pay appellate counsel except for the appeal record, which the attorney should have prepared at the State's expense. Such payments shall be approved before every level of the appeal by the regional office. Recommendations of the attorney shall be seriously considered in these cases, and, if the attorney believes a notice of appeal must be immediately prepared and filed, it may be done, and the attorney shall be paid for time spent in this effort.

(j) When a corpsmember entitled to legal services is arrested at a distance from the center, and the Center Director is unable to arrange for the provision of legal representation and bail, the regional office shall make such arrangements.

(k) The Center Director shall pay up to $50 for bail or purchase of a bail bond provided the corpsmember, agrees in writing, prior to bail, to reimburse the Job Corps. Higher amounts shall have prior regional office approval.

(l) The Center Director, if the corpsmember agrees in writing, shall advance the corpsmember up to $50 to pay fines, or higher amounts with the approval of the regional office.

(m) In exceptional cases, involving either a corpsmember, corpsmembers, or the center itself, the regional office may pay a reasonable and definite amount for legal expenses in civil cases.

(n) When a corpsmember is in jail or detention at a location near the center awaiting trial or serving a sentence of 60 days or less, the Center Director shall visit or have a counselor or other appropriate senior staff member visit the corpsmember on a regular basis and shall provide any assistance needed in the area of health, welfare, safety, personal affairs, education, and training. The visitor shall offer to assist the corpsmember in developing a study program, and in supplying books and training materials, and shall review and evaluate the corpsmember's study and training progress.

§ 97a.93 Voting rights.

(a) The Center Director shall develop a written plan to enable eligible corpsmembers and staff to vote either locally or by absentee ballot (section 418(b)).

(b) Such a plan shall include provisions that the Center Director shall:

(1) Advise staff and corpsmembers of their rights and responsibilities relative to voting, and provide them with current absentee registration and voting information;

(2) Disseminate voting information provided by Job Corps;

(3) Furnish assistance on voting procedures, including the service of someone authorized to attest to required oaths;

(4) Encourage and assist eligible voters to send for absentee ballots;

(5) Arrange for ballots to be marked in secret and safeguarded afterwards;

(6) Arrange for the ballots to be mailed on time; and

(7) Provide transportation to the appropriate polls for corpsmembers eligible to vote within a reasonable distance from the center, whenever feasible.

§ 97a.94 Rights relative to religion.

The right to worship or not worship as they choose shall not be denied to any corpsmember. Religious services may not be held on center unless the center is so isolated as to make transportation to and from community religious facilities impractical. If religious services are held on center, no compensation shall be paid to those who conduct such services, corpsmembers shall be instructed that they are not obligated by Job Corps to attend such services, and services shall not be confined to one religious denomination.

§ 97a.95 Right to privacy.

(a) Each corpsmember shall be entitled to privacy in keeping with the right to privacy and other Federal, State and local laws, and in accordance with these regulations.

(b) The Center Director shall see that each corpsmember's area, including any storage for belongings, remain private. Neither corpsmembers nor their belongings shall be searched or examined except under the following special circumstances:

(1) General inspections of corpsmember's living quarters and storage areas shall be conducted periodically.

(2) Searches for unauthorized goods as defined in § 97a.10 may be conducted if the Center Director has good reason to believe these are being hidden on the center. The Center Director shall assert his or her reasons for such a search immediately before or after the search in writing to the regional office. Searches for narcotics or other dangerous drugs shall follow the procedures set out by the regional director of the Drug Enforcement Administration.

(3) Searches may be conducted for evidence to be used in criminal prosecution. These shall always be done by a law enforcement officer with a search warrant, except when delay would endanger the physical well-being of corpsmembers.

(4) No search shall be wider than that necessary to accomplish the specific purpose of the search. However, if unauthorized goods are found as a result of a search, these may be confiscated. If evidence which may be used in a criminal prosecution is discovered, the corpsmember involved is to be advised of his or her right to remain silent and to an attorney pursuant to § 97a.92(c).

(c) Personal information contained in center records, as well as any private verbal or written communications between corpsmembers and staff members shall be held in confidence. When it is necessary for a staff member to inform others about personal information given to him or her by a corpsmember, the corpsmember shall be informed of this and the reasons therefor. Information from confidential records, which shall include at least health records, counseling records, and juvenile court records may be made available to other staff with the prior consent of the corpsmember by those who maintain the records if this is judged to be in the best interests of the corpsmember. No copies of information contained in confidential records shall be made or kept by anyone except as provided in § 97a.96.

[40 FR 50813, Oct. 31, 1975, as amended at 41 FR 20885, May 21, 1976]

§ 97a.96 Disclosure of information.

(a) The Center Director shall respond to all requests for information or records during a corpsmember's enrollment. After termination, the regional office to which the corpsmember's personnel record has been sent shall respond. These requests shall be treated as requests under the Freedom of Information Act and the Privacy Act of 1974, and shall be handled according to the regulations at 29 CFR Parts 70 and 70a.

(b) The requesting party's need for information shall be balanced against the corpsmember's right to privacy. Doubtful cases shall be resolved in favor of the corpsmember's right to privacy. Difficult problems shall be resolved after consultation with the appropriate regional solicitor. No records or information of any kind about the corpsmember shall be released to anyone without the corpsmember's signed consent, and, in the case of a corpsmember under the age of majority the signed consent of the parent or legal guardian, except as otherwise provided in this part, and:

(1) A corpsmember's name, address, age, and date of entry may be released to news media or members of the public;

(2) On request, parents or guardians and probation or parole officers may be given information regarding a corpsmember's general medical condition and/or achievement in the program;

(3) In the event of a medical or psychiatric emergency, the center physician may approve release of medical, behavioral and/or counseling information necessary for the treatment of a corpsmember;

(4) A corpsmember's name, address, age, former residences, dates of entry and/or termination, forwarding address, and other leads to locate a

corpsmember or his or her family may be released to State or Federal law enforcement agencies or other government investigators;

(5) Placement agencies shall be given a summary of each corpsmember's academic and vocational achievement and general biographical information, but no information from confidential records. Such agencies may give this information to prospective employers, schools and training institutions when this will assist in the placement of a corpsmember.

(c) Corpsmembers shall have access to their records, and information from a corpsmember's record shall be supplied to the corpsmember on request. If a corpsmember, or the parent of a corpsmember under the age of majority, objects to any information in the record, he or she may request a hearing before the Center Director to request that such information be removed or modified. Should this request be denied, the Center Director shall prepare a written statement of the reasons therefor, and the corpsmember and his or her parent or legal guardian as appropriate may also put in writing their objection to the content. These documents shall be included in the corpsmember's personnel record.

(d) The regional solicitor shall be consulted and he or she shall make a prompt determination of the appropriate response whenever a subpena to produce a corpsmember's records, to testify concerning such records, or to testify concerning a corpsmember's activities while enrolled in Job Corps is received.

(e) No corpsmember records or information about corpsmembers shall be supplied to any researcher, nor shall corpsmembers or staff participate in any study, directly or indirectly, unless the research project has been cleared through the regional office and the Director, Job Corps. In the case where research is to be done at a center, prior arrangements shall be made with the Center Director. All staff and all corpsmember participation shall be voluntary.

(f) No research project shall be approved unless the researcher guarantees to protect the anonymity of all staff and corpsmembers involved in any presentation of the results of such study.

§ 97a.97 Disciplinary procedures and appeals.

(a) The Center Director, with center staff and corpsmember participation as set forth in the Corpsmember Handbook, shall be responsible for developing reasonable rules and regulations for corpsmembers. These shall include but not be limited to requirements that:

(1) Reasonable care be exercised in the use of center facilities and equipment;

(2) Possession of unauthorized goods as defined in § 97a.10 be prohibited;

(3) Gambling on center be prohibited;

(4) Maintaining or operating private vehicles on center be prohibited;

(5) Assaultive behavior be prohibited;

(6) The lending of money at interest be prohibited;

(7) Persistent disobedience of center regulations and serious disruptive behavior be prohibited; and

(8) Repeated or prolonged absences from duty be prohibited.

(b) The Center Director, with the assistance of the center standards officer appointed by the Center Director, and with staff and corpsmember participation as set forth in the Corpsmember Handbook, shall be responsible for developing reasonable sanctions and for appropriately matching such sanctions to the breaking of the rules set out in the Corpsmember Handbook (section 410(a)).

Such sanctions shall include at least the following:

(1) Spoken and written reprimands;

(2) Suspension of privileges, except that suspension of dining hall, canteen, and religious privileges shall be prohibited;

(3) Fines, except that no corpsmember shall be fined more than $5 per offense or per pay period and there shall be no carry-over of fines from one pay period to another. When a fine is imposed, the Center Director shall give the corpsmember a receipt, forward the fine with a copy of the re-

ceipt to the Corpsmember Association Welfare Council, and retain a record of the fine for audit purposes. Fines shall be used sparingly as sanctions.

(4) Restriction to center grounds not exceeding 30 days;

(5) Reduction in the living allowance down to a minimum of $30 per month but not in amounts to exceed $5 in any one month (section 409(a));

(6) Restitution by repair or payment for property damaged willfully or through negligence or misappropriation, except that no corpsmember shall be charged more than $300 for such damage;

(7) Disciplinary discharges from the Job Corps; except that no disciplinary discharge shall be given to a corpsmember: (i) Prior to a center review board hearing, unless the corpsmember has been convicted of a serious crime or has been confined under sentence for more than 60 consecutive days;

(ii) Against whom criminal charges are pending;

(iii) If a medical discharge for physical or psychiatric reasons may appropriately be substituted therefor;

(iv) Solely for health-related problems; and

(v) Solely for nonparticipation in the program.

(8) Forced resignation from the program shall not be a proper sanction; and

(9) Sanctions relating to the possession and/or distribution of drugs shall be structured so as to take account of the policy of assistance set forth in § 97a.69.

(c) Each Job Corps center may establish corpsmember councils, consisting of at least three elected corpsmembers per floor or dormitory, pursuant to procedures set forth in the Corpsmember Handbook. If established, the corpsmember councils, with guidance from the center standards officer, shall handle minor rule infractions as defined in the Corpsmember Handbook. Corpsmembers sanctioned by the corpsmember council may appeal to a center standards officer.

(d) Each Center Director shall appoint one or more staff members as center standards officers. Such center standards officers shall:

(1) Make decisions in all appeals by corpsmembers from corpsmember councils; and

(2) Make decisions in all cases involving major rule infractions as defined in the Corpsmember Handbook.

(e) In all cases the center standards officer shall:

(1) Notify the corpsmember orally and in writing of the specific charge or charges against him or her;

(2) Conduct an investigation of the charges;

(3) Make a determination of the corpsmember's culpability or nonculpability;

(4) If culpability is found, impose the appropriate penalty; and

(5) If a disciplinary discharge is believed warranted, recommend such to the center review board.

(f) Corpsmembers shall have the right to appeal decisions of the center standards officers to the center review board.

(g) Each center shall establish a center review board pursuant to procedures set forth in the Corpsmember Handbook. The center review board shall have an odd number of members, chosen from different program areas. The review board should include at least one corpsmember. The board shall not include the Center Director or Acting Center Director, Deputy Director, the corpsmember's counselor, or a standards officer who has already ruled in the case. Decisions shall be by simple majority.

(h) In each case the center review board shall hold its hearing within ten days after a case is referred to it during which time it shall:

(1) Notify the corpsmember in writing at least 24 hours before the hearing of the date and time of the hearing, of the specific charges against him or her, and the penalties which may be imposed, and shall attach to the notice a list of the enrollee's rights to: (i) Have 24 hours in which to prepare a defense;

(ii) Be represented at the hearing by a staff member of his or her choice, who shall be appointed at the corpsmember's request by the Center Director;

(iii) File a written answer or make a verbal reply to the allegation(s) made, with or without the assistance of others;

(iv) Call witnesses on his or her behalf at the hearing;

(v) Confront, question and cross examine witnesses against him or her; and

(vi) Stand silent at the hearing without risk of any penalty therefor;

(2) At the hearing, the center review board shall consider all relevant evidence and determine the corpsmember's culpability or non-culpability;

(3) If culpability is found, assess the appropriate penalty;

(4) If a disciplinary discharge is found warranted, recommend such to the Center Director;

(5) Sign an accurate summary of the hearing and its recommendation, and provide a copy thereof to the Center Director and the corpsmember; and

(6) Inform the corpsmember in writing of the right to send a written statement to the Center Director, using staff assistance if he or she chooses, stating the reasons the corpsmember feels the board's recommendation is unfair.

(i) The Center Director shall review all cases where a recommendation has been made by the center review board, and all cases in which the board recommends discharge. The Center Director shall make a decision solely on the record of the hearing and the corpsmember's statement, if any, and, based upon these, may modify or reverse the findings and/or penalties (section 410(b)). The Center Director shall notify the corpsmember and center review board of his or her decision in writing, and, if the Center Director decides upon a disciplinary discharge, shall attach to the corpsmember's copy of the decision a notice, including the address of the appropriate regional office, that the corpsmember has the right to:

(1) Appeal the discharge decision to the regional office appeal board, stating in writing why the corpsmember believes the decision to be unfair;

(2) Have assistance, including legal counsel if desired by the corpsmember, in the preparation of the appeal; and

(3) Have at least 24 hours to prepare the appeal.

(j) In all cases in which the Center Director decides upon a disciplinary termination, the Center Director shall immediately forward the entire case record to the appropriate regional office, attention: Job Corps appeal board. If the center review board has recommended against a disciplinary termination, but the Center Director overrides such recommendation, the corpsmember's termination shall be considered as an appeal by the regional appeal board, whether or not the corpsmember submits an appeal to it. Instructions for completing forms required for this record shall be found in the Forms Preparation Handbook. If the corpsmember initially accepts a disciplinary termination and is terminated, but later wishes to appeal, he or she shall send an appeal statement to the center or to the regional office appeal board. This, however, must be done within thirty days of termination.

(1) Pending the decision of the regional office appeal board, the Center Director may: (i) Retain the enrollee at the center; or

(ii) Send the enrollee home on administrative leave with travel at government expense but without allowances, provided that the Center Director certifies to the regional office appeal board in writing, with a copy to the corpsmember, that the corpsmember's continued presence at the center would be a source of serious disruption.

(k) The regional office shall make a decision solely on the record and shall notify the corpsmember of the decision regarding his or her appeal within 15 working days of the receipt of the appeal record. If the record is inconclusive, the regional office appeal board shall remand the case to the center review board for completion of the record.

(l) In the event that the regional office appeals board decides in favor of the corpsmember, the corpsmember shall be notified that he or she has been reinstated, and the following actions shall occur:

(1) If the corpsmember has been retained at the center, pending appeal, the regional office should arrange immediately for the corpsmember's

transfer unless retention at the center is approved by the Center Director; or

(2) If the corpsmember has been sent home, the center to which he or she is or was assigned shall arrange with the Finance Center for restoration of all allowances as of the day he or she began administrative leave or was terminated, in the event such termination occurred prior to making an appeal. The regional office should arrange for the corpsmember's immediate return to the center if approved by the Center Director, or for a transfer with transportation at government expense to another center.

(m) Corpsmembers may be transferred to centers in the same or a different region, but the receiving center shall offer the same vocational training which the corpsmember was taking at the former center.

(n) Further review after the decision of the regional appeal board may be undertaken pursuant to the review procedures of Part 98 of this title.

[40 FR 50813, Oct. 31, 1975, as amended at 41 FR 20885, May 21, 1976]

§ 97a.98 Civil rights and equal opportunity.

(a) Center Directors shall establish a grievance procedure for all complaints concerning civil rights and equal opportunity and shall appoint a center equal opportunity coordinator to direct the operation of the procedure. The procedure shall include methods for handling complaints of corpsmembers arising from action by persons outside the Job Corps center.

(b) The procedure shall provide that complaints may be made either orally or in writing to any staff member, including the center's civil rights equal opportunity coordinator.

(c) Any appropriate staff member, working with the equal opportunity coordinator, shall try to resolve the complaint.

(d) If the center staff cannot resolve the issues of the complaint within 5 working days, the Center Director shall send a written report and shall request the corpsmember to send a written complaint to the regional EEO officer. The Center Director shall offer the complaint staff assistance in the writing of the complaint. The regional EEO officer shall try to resolve the complaint within 15 working days.

(e) The center equal opportunity coordinator shall maintain an accurate written record of each complaint, including the individuals involved, the nature of the complaint, and actions taken. A copy of each of these records shall be sent to the regional office.

(f) In the event a corpsmember alleges mistreatment or discrimination by law enforcement officials or center security officers, the matter shall immediately be brought to the attention of the Center Director who shall make a thorough investigation of such alleged mistreatment. The same grievance procedure outlined in paragraphs (b), (c), (d) and (e) of this section shall apply.

(g) Persons who make complaints under this section shall not be subjected to punishment or other unfavorable administrative actions because of the submission of such complaints.

§ 97a.99 Cooperation with agencies and institutions.

(a) Each center, regional office and the national health office staff shall establish a broad network of referral sources such as health, rehabilitation and social service agencies for medically terminated corpsmembers. If a social service agency such as a court or welfare department has jurisdiction over a corpsmember who is to be referred to another source after medical termination, the center shall get concurrence of the agency in any referral.

(b) Centers and regional offices shall maintain cooperative relationships with screening and placement agencies.

(c) Each center shall establish cooperative relationships, including written agreements whenever feasible, with Federal, State and local law enforcement agencies having jurisdiction over the centers to insure police backup support for emergencies at the center and the orderly processing of criminal offenses. The written agreements shall set out procedures for handling any complaints which may arise concerning law enforcement and the center.

(d) Centers should establish relationships, whenever feasible, with educational institutions to arrange for GED examinations and/or low-cost off center vocational training and to develop placement opportunities.

(e) Each center shall establish a community relations program pursuant to section 411 of the Act, to include establishment of a community relations council. The program shall have such objectives as:

(1) Giving community officials advance notice of changes in center rules, procedures, or activities that may affect the community;

(2) Affording the community a voice in center affairs of direct concern to it, including policies governing the issuance and terms of passes to corpsmembers;

(3) Providing center staff and corpsmembers with full and rapid access to relevant community groups such as law enforcement agencies, educational institutions, and agencies which work with young people in the community;

(4) Arranging recreational or similar events in which both local residents and corpsmembers may participate;

(5) Developing, where feasible, job opportunities for corpsmembers in the community; and

(6) Providing corpsmembers an opportunity for participation in community service projects (section 411).

(f) Each Job Corps center shall, to the extent feasible, establish cooperative relationships with other local manpower and manpower-related agencies, including prime sponsors under the Act and with other agencies operating programs funded through the Department of Labor.

Subpart F—Applied Vocational Skills Training (VST) Through Work Projects at Civilian Conservation Centers (CCC's)

§ 97a.100 Applied vocational skills training (VST) projects.

Applied vocational skills training (VST), provided in an actual work setting, involving authorized construction or other projects which result in finished facilities or products, shall be the major vehicle for the training of corpsmembers at Civilian Conservation Centers (CCC's). CCC's may also perform VST public service projects for nearby communities and for other Job Corps centers, and may also conduct approved, applied VST training related to center support, such as food preparation, facilities maintenance or automotive repair (Section 407(a)).

§ 97a.101 Annual VST plans.

(a) All CCC center operators shall develop annual VST plans. Such plans shall include proposed VST projects for the coming fiscal year. In the development of such plans, each center operator shall consult with the MA regional office regarding the appropriateness of the plan and each project therein. If the proposed projects are to involve the use of instructors from participating labor unions, the center operator shall obtain, during the planning stage, written concurrence from the instructors and/or the union for each project in which union training is involved.

(b) Center operators shall describe in their annual plan all technical plans and designs for individual VST projects which have already been completed or which are in progress. The annual plan shall also delineate the nature and amount of the funds which have been used or are being used for these plans and designs.

(c) CCC center operators shall estimate the costs of their annual plan and individual VST projects so that the total costs, if all proposed projects are approved, will not exceed nor vary greatly from the total funds specified for VST project purposes for each center in the annual DOL budget request.

(d) CCC center operators shall schedule their planning so that they are able to submit completed annual plans and individual project proposals in duplicate to the appropriate ETA regional office by no later than January 15 of each year.

(e) Each CCC annual VST plan shall include a Center Summary listing all proposed projects intended to comprise the center's total VST program for the upcoming fiscal year, together with summary cost factors, and estimates of the appraised value of the completed projects and of corpsmember months of training planned.

In addition to the Center Summary, each plan shall formally propose every individual VST project planned in accordance with the requirements of §§ 97a.102 and 97a.103.

§ 97a.102 VST project proposals.

(a) Every VST project proposal shall be included in the annual VST plan and shall show evidence that:

(1) The CCC operator has planned, to the maximum extent possible, all VST projects, especially projects involving major efforts to repair, rehabilitate or replace on-center buildings and facilities, as corpsmember VST projects within the framework of the center's vocational skills training program;

(2) The center operator has given due consideration to the need for projects, the nature, size and scope of which provide for the widest possible range of skills development based on the approved vocational course offerings at the center, and that the training inherent in the proposed, projects is geared to job placement in the particular trades for which the corpsmembers are being trained in their center vocational courses;

(3) The center operator has chosen projects in accordance with the following order of priorities:

(i) Projects to design, plan, and carry out on-center rehabilitation and construction in preparation for and as a basis for the execution of conservation projects;

(ii) Conservation projects to be carried out on Federal, State, county or municipal public lands. These projects shall be primarily directed to the conservation, development and management of public natural resources or recreation areas and shall include partial or total construction or rehabilitation of permanent facilities related to the management of such resources or areas. Such VST projects shall be built primarily around the construction trades and may include work on public benefit facilities, road construction, recreation areas, and public agency facilities and housing;

(iii) Center staff housing construction or improvement projects;

(iv) Public service projects for nearby communities; and

(v) Repetitive or production-oriented projects which provide prevocational experience or short-term or inclement weather activities, such as the production of cattle guards, picnic tables and other such items. Such projects should be used sparingly;

(4) The center operator has planned all off-center projects so that a maximum of corpsmember training is provided relative to the amount of funds to be expended. Proposals for such projects shall show that all buildings, facilities, roads, etc., or features thereof, are not of a higher quality than would be provided by the benefiting agency from its own funds were Job Corps not involved. To the extent possible, proposals shall include as costs to Job Corps only those items which directly relate to corpsmember training. Benefiting agencies should provide the maximum amount possible of technical assistance, materials, and other resources. Off-center construction project proposals may include the cost of only essential heating, plumbing and electricity. They shall not include the cost of ancillary-features, facilities, equipment, or refinements such as landscaping, carpeting, air-conditioning, black-topping of roads, decorations, furnishings, etc., which do not contribute to or involve corpsmember training. Neither shall proposals include the cost of technical assistance in the planning or designing of such ancillary features;

(5) Public service projects will generally benefit the public in the vicinity of the center and are designed to promote community support for and involvement with the center, a hospitable reception for corpsmembers in the community and training for corpsmembers in civic and community responsibilities. The proposal shall also describe the results of efforts the center operator has made to enlist community support and resources, including materials, technical assistance, and cooperative labor. Center operators shall not propose community service projects which:

(i) Are not on public lands, or which promote, preserve or protect the economic self-interest of private individuals or groups, or community service organizations, whether profit or nonprofit;

(ii) Involve capital construction which would normally be handled through city funding, industry funding or bond issue; or

(iii) Exceed 15 percent of the total corpsmember months of the center's annual vocational skills training projects; and that

(6) VST projects proposed will not displace presently employed workers or impair existing contracts for service.

(b) Each VST proposal shall include:

(1) A complete description of the proposed project, or modification thereof, involving $1,000 or more of direct project costs. The proposal shall contain a clear and separate delineation of all component costs of the project such as materials, equipment operation, transportation, equipment to be installed, rentals, and subcontracted services. Quantity, unit and unit costs shall be given whenever possible;

(2) The costs of technical assistance and support necessary for specific VST project planning and design, compliance inspection or technical supervision. In describing technical assistance needs and costs, center operators shall indicate specifically the nature of the technical assistance, the number of persons involved, the task(s) to be performed and the time and expenses involved;

(3) The distance of the project from the center, the types of training involved in the project, the corpsmember months of training for each type of training, any aspects of the project which will not involve corpsmember training, the estimated appraised value of the completed project and the identity of the agency to be benefited by the project;

(4) Long-term accounting information, including detailed breakdown of cost estimates, in prorated form, for the entire life of the project for any carryover project proposed to have a life span of more than 1 year. The center operator shall provide this information in each subsequent (fiscal year) submission of the project proposal;

(5) Separate identification of each small project in a group of similar projects which involve under $1,000 each of VST funds. These similar projects may be combined under one heading; e.g., "miscellaneous carpentry projects," in a single project proposal with summary treatment of the information required in paragraph (h) (1) and (2) of this section; and

(6) For proposals which involve major rehabilitation or new construction of on-center facilities, in addition to the description required in paragraph (b)(4) of this section:

(i) A clear justification for the need thereof, and information on building type, location, size (outside dimensions), interior layout and functional use;

(ii) A statement about how the proposed use is planned to be accommodated while improvements/construction are underway;

(iii) Evidence that, before such rehabilitation or new construction was proposed, multiple utilization, reduction, or consolidation of existing space was considered for efficiency and economy; and

(iv) Evidence that the facility, with regard to new or additional space, was included in, and has received prior national office approval, as part of the center's facility/site development plan in the annual review of such plans for CCC's, (§ 97a.124(i)(3)), or was approved by separate action of the national office.

(c) Separate project proposals may be submitted for technical assistance costs involving only advance survey, planning and design of projects contemplated for periods beyond the upcoming fiscal year. These proposals shall include, to the extent possible, a description of the nature, size, scope, location and estimated costs of the project under consideration. Any approval of the advance technical assistance proposal shall not be construed as a prior commitment by Job Corps to the actual project proposal, which must be submitted, fully described, at the appropriate time in the annual VST plan.

(d) For those portions of proposed projects which are beyond the capability of the center's vocational training program, as specified in the annual DOL budget request, center operators shall include with the project proposal full justification for:

(1) Proposed costs for technical assistance which are in excess of 20 percent of the total project cost. Operators shall not submit such costs on an "averaged out" or group-of-centers basis;

(2) Proposed costs for specialized subcontracted services which are in excess of 15 percent of the total project costs; and

(3) Proposed costs of equipment to be permanently installed which are in excess of 15 percent of the total project costs.

(e) Center operators shall not include in any VST project proposal the costs of any subcontract, the purpose of which is to accelerate a project to meet a completion date.

(f) Center operators shall not include in VST proposals such high cost items as bridge construction, major culvert construction, road paving, or sewage facilities to be accomplished by contract if;

(1) As part of a VST project, the costs are greatly in excess of the percentages outlined in paragraph (d) of this section; or

(2) Such items are not part of a proposed VST project.

(g) Center operators shall not include in VST project proposals the costs of administrative direction, management assistance or overall program planning and support provided by the center operator above the center level when such costs are not directly related to the planning or execution of any specific project.

(h) Proposals shall not include the costs of such items as training aids, audiovisuals, texts, films, projectors, or specialized training equipment.

(i) Proposals for spike camps and/or off-center residential facilities shall be submitted only as a portion of a specific VST project proposal. The center operator must show a clear relation between the training involved in the whole VST project and in the spike camp or off-center residential facility part of the project. In addition, the spike camp and/or off-center residential facility section of the proposal must give evidence that:

(1) The proposed spike camp or off-center residential facility shall not be permanent or maintained beyond the life of the related VST project;

(2) The spike camp or off-center residential facility shall be 75 miles or less from the center except in extraordinary specified circumstances;

(3) The costs involved shall be separately recorded and analyzed by the center operator for cost effectiveness as part of the overall center operation;

(4) The spike camp shall be the center's only operational spike camp;

(5) Education and supervision, including residential and support services, shall be commensurate with those at the center and will be supplied at all times during the life of the project;

(6) Adequate specified communications shall exist between the spike camp or off-center residential facility and the center; and

(7) No beginning readers shall be assigned to spike camp operations.

§ 97a.103 VST project review and approval.

(a) Project approval, by the ETA regional and/or national office, shall constitute authority for the center operator to proceed with approved projects only, and only within funding limitations.

(b) All center operators shall submit VST proposals through agency channels to the appropriate ETA regional office which shall have approval authority for most VST plans and projects. However, the type of proposals listed below shall be forwarded by the ETA regional office, with the ETA regional office's comments and recommendations, to the national office through agency channels for final decision:

(1) On-center facility replacement/rehabilitation projects and those which involve expansions in floor space;

(2) Exceptional center recreational facilities projects, such as swimming pools and ice skating rinks;

(3) Projects for which the costs of specialized technical assistance, subcontracted services, and/or equipment to be permanently installed are in excess of limits allowed by

§ 97a.102(d). Centers shall not develop detailed plans or advertise for bids on such projects until the national office has approved the projects;

(4) On-center projects which involve requests for capital outlay funds to supplement VST funds;

(5) Project proposals of questionable legality;

(6) Projects for which national office interpretations of policy are requested by the ETA regional office or by the center operator; and

(7) Project proposals which involve the establishment or continued operation of spike camps or off-center residential facilities intended to provide support for VST projects.

(c) Notice of ETA regional and/or national office approval or disapproval of the annual VST plans and project proposals shall be transmitted in writing to the operator by no later than April 1 of each year. The specific amount for which each individual project proposal has been approved shall be indicated in the notice.

(d) The ETA regional offices and/or the national office shall disapprove, in whole or in part, any VST proposal which is in violation of these regulations. If a VST plan or project proposal or part thereof has not been approved, the notice shall include the reasons.

(e) If an annual plan or project proposal or part thereof has been disapproved by the ETA regional office, the center shall drop the project unless it is required by the ETA regional office to amend and resubmit the plan, or it may appeal the decision to the national office. If asked to amend and resubmit, the center shall do so. The national office shall provide to the regional office, and the regional office to the national office, copies of all VST projects reviewed, together with appropriate review decisions and related correspondence.

§ 97a.104 Modification of approved VST projects.

Once a VST project has been approved, the center operator shall insure that its size and scope remain essentially the same throughout the entire life of the project. Any proposed increase in cost of more than 15 percent above the amount originally approved shall be submitted for approval in the same manner as are new projects.

§ 97a.105 Cancellation or deferment of approved VST projects.

Center operators shall provide immediate notice to the ETA regional office of the cancellation or deferment of already approved VST projects. In such cases, they shall simultaneously submit plans for proposed alternative projects to maintain the center's program at adequate training levels.

§ 97a.106 VST budgeting.

Center operators shall maintain VST project funds as a separate center budget line item and shall maintain strict accountability for the use or non-use of such funds. Center operators shall not transfer VST project funds to any other center budget category or program activity without the approval of the Job Corps national office or except as provided for by specific agreement.

§ 97a.107 Monitoring of VST project progress.

(a) The ETA regional office shall monitor every aspect of approved VST projects to insure the best possible use of allocated VST funds toward project progress and completion.

(b) The ETA regional office shall report immediately to the national office any instance of unauthorized projects or expenditures being undertaken.

§ 97a.108 Public identification of VST projects.

All VST projects in progress and all completed projects and products shall be prominently marked as having been produced by Job Corps centers. All movable products shall be identified by either affixing a marked non-corroding metal plate or by branding/stamping the product with the Job Corps name and/or emblem. Buildings, campgrounds, or other permanent projects shall be marked with appropriate signs identifying the project and stating that it is presently being built or has been built by Job Corps.

§ 97a.109 Supplementation of VST project funds.

(a) In exceptional cases, when the cost greatly exceeds the percentages of VST funds allowed in § 97a.102(d), center operators may submit requests for capital outlay funds to supplement VST funds.

(b) Such capital outlay fund requests shall be combined and submitted simultaneously with the initial VST project proposal, shall contain a full justification of the need, and shall be limited to cases of on-center major facility rehabilitation/replacement construction projects or portions thereof, such as subcontracts for specialized services and/or purchase of equipment to be permanently installed, which are clearly beyond the scope of the center's vocational training capability, e.g., transformer installation, and certain aspects of sewer installation.

(c) Centers shall not request capital outlay funding for building construction, services, or equipment to be installed in center facilities, if these are to be accomplished or installed totally by subcontract.

(d) No capital outlay funds shall be requested in order to merely accelerate a project's completion date.

(e) Centers shall not request capital outlay funds in order to save VST funds. Capital outlay funds shall not be requested as a substitute for those percentages of VST project funds which are for specialized subcontracted services and/or purchase of equipment to be installed in on-center construction projects. The operator shall make every effort to reduce to an absolute minimum the costs which cannot be handled through VST funding. In rehabilitation or new construction, existing items of installed equipment shall be used as long as possible. Requests for new equipment shall be for essentials only, and shall contain ample demonstration that existing items of equipment cannot be used in rehabilitated or newly constructed buildings.

(f) Capital outlay fund requests shall not be submitted with or as part of the regular, annual requests for equipment replacement.

(g) Capital outlay fund requests for the purpose of supplementing VST funds shall identify the total amount of capital outlay funds needed for the entire life of the related VST project, prorated by fiscal year if the project spans more than one year. The request shall contain a clear and separate delineation of the costs per item for which the capital outlay funds are requested.

(h) Only the national office may approve a request for capital outlay funds to supplement VST funds in accordance with § 97a.103(b)(4).

Subpart G—Administrative Provisions

§ 97a.110 Basic personnel standards for operators.

The Center Director shall:

(a) Develop a written staffing plan which shall provide for an efficient and effective management structure, with clearly delineated lines of responsibility and authority. The plan shall provide for flexibility of staff use to meet center and individual corpsmember needs. Staffing plans for contract centers shall be submitted to the regional office for approval. Centers operated by Federal agencies shall determine center staff positions in accordance with program needs which are established for centers in consultation with and with the approval of the Department of Labor.

(b) Recruit and hire only qualified staff. Teachers and health professionals shall be properly certified, licensed, or accredited, including, certification, licensing, or accreditation in the State in which the center is located. The regional office may waive this requirement for teachers in exceptional circumstances. Employment of full- or part-time physicians, dentists, and mental health professionals shall be subject to the approval of the regional office, with consultation, if necessary, of the national office health staff;

(c) Develop and maintain personnel management policies, including plans for hiring, supervision and evaluation of staff, in accord with specifications agreed to in the operator's contract or agreement with the Department. Federal civil service and agency regulations shall apply to centers operated by Federal agencies;

(d) Utilize the services of work study students, interns, volunteers or other types of supplementary staff only after submission of a letter of intent and obtaining the approval of such by the regional office;

(e) Establish labor management relations in accordance with agency guidelines in the case of Federally operated centers and in accordance with the provisions of the National Labor Relations Act in the case of contractors. The Job Corps shall not undertake conciliation, mediation or arbitration of disputes between center operators and labor organizations, nor shall the Job Corps pay legal or other fees generated by such disputes as direct costs against the contract.

(f) Shall always appoint an acting Center Director in his or her absence. If a Center Director terminates, the center operator shall appoint an Acting Center Director until a Center Director is appointed; and

(g) Conform to all Federal, State and local laws including those pertaining to nepotism in hiring.

§ 97a.111 Non-discrimination and equal opportunities.

(a) All deliveries of service funded under this part shall conform to all Federal, State and local laws pertaining to non-discrimination and equal opportunity.

(b) Each center operator shall develop a written affirmative action plan, tailored to the problems and needs of the individual center. The plan shall be designed to:

(1) Obtain, develop and utilize the skills of minority group staff members, including women, to the maximum extent, with due consideration to the relative percent of minority group corpsmembers;

(2) See that women and minority groups members are assimilated throughout various center organizational and responsibility levels; and

(3) Provide prompt, fair, and impartial consideration of discrimination complaints, pursuant to § 97a.98.

§ 97a.112 Limitation on political activities.

(a) No officer or employee of the Job Corps shall make any inquiry concerning the political affiliation or beliefs of any corpsmember or applicant for enrollment.

(b) No officer, employee, or corpsmember shall take any active part in political management or campaigns, except as may be provided by or pursuant to statute, and no such person shall use his official position or influence for the purpose of interfering with an election or affecting the result thereof.

(c) No program under this part shall involve political activities, and neither the programs nor the funds provided therefor, nor the personnel thereof, shall be in any way engaged in the conduct of political activities in contravention of 5 U.S.C. Chapter 15 (section 418 (a) and (b)).

(d) No officer, employee, corpsmember or other Federal employee shall solicit funds for political purposes from corpsmembers in contravention of 18 U.S.C. 602.

§ 97a.113 Staff training.

(a) The Center Director shall provide necessary staff training based on a center-developed annual training plan. Each plan shall set out anticipated training needs, including the anticipated number of staff members to be trained, where and when the training is proposed to be performed, and the estimated cost.

(b) Centers operating under interagency agreement shall obtain approval of training plans using the method established by their Federal agency, which shall see that a copy of the approved plan is forwarded to the ETA regional office. Contract centers shall submit their plans to the regional office for approval.

(c) Staff training shall include, as a minimum:

(1) General orientation to the Job Corps program and its corpsmembers' background;

(2) In-service training on a regular basis; and

(3) Supervisory training.

(d) The center shall maintain a record of training completed by each staff member. A copy of the record shall be placed in the relevant staff member's personnel file.

§ 97a.114 Corpsmembers records management.

(a) Center operators shall establish a uniform system for the maintenance of ongoing records for each corpsmember during enrollment and for the disposal of such records after termination.

(b) During enrollment, information kept about the corpsmember shall include separate running accounts of the corpsmember's educational and vocational training, counseling, recreational and dormitory activities, health history, and administrative records covering such matters as data pertaining to enrollment, allowances and allotments, leave records, a resume of corpsmember's qualifications, and disciplinary actions taken. Each and every copy of a corpsmember's health and counseling records shall be maintained in a confidential manner, the former in the health unit and the latter in or near the counselor's office. Education and vocational records shall be maintained in the appropriate departments. Administrative records including the Corpsmember Profile Record or equivalent computer document shall be maintained by the Center Director or his or her designee.

(c) Upon termination, the various files shall be purged of extraneous material and an official terminated Corpsmember Personnel Record shall be assembled in one folder. Such record shall contain the following forms and documents:

(1) Affixed to the left side of the folder, the Designation of Beneficiary, Notification of Next of Kin, Travel Authorization and Voucher, Allotment Determination, Living Allowance and Allotment Change Notice(s), record of clothing issued, Receipt for Taxable Clothing and Transportation allowances, Initial Allowance Authorization, Corpsmember Profile Record or equivalent computer document, and Notice of Termination;

(2) Affixed to the right side of the folder, any appeals record(s), parental consent(s) obtained, statements from courts and correctional institutions, statements from other agencies, the Enrollment and Departure form, the Corps Data Sheet, request(s) for readmission, the Certificate of Attainment, the training achievement record, and placement related forms and documents; and

(3) The health record, to be assembled and reviewed for completeness by the center health staff, sealed in an envelope marked confidential, and inserted in the folder. The health folder shall include at least those health forms found in the Job Corps Forms Preparation Handbook which are applicable to individual corpsmembers and any other documents concerning the medical, dental and mental health treatment of the corpsmember during enrollment.

(d) The counseling record, including an initial counseling assessment of personal and social status and pertinent notes about subsequent sessions and related services, shall not be included in the Corpsmember's Personnel Record. It shall be retained at the center for 6 months after termination and then destroyed.

(e) Except in the event of a corpsmember's death, when the entire terminated Corpsmember Personnel Record shall be sent to the national health office, the Center Director shall forward the official records within 5 days to the regional office having jurisdiction in the State to which the corpsmember has returned.

(f) Instructions for completing and distributing all forms necessary to the compilation of the Corpsmember Personnel Record shall be found in the Job Corps Forms Preparation Handbook.

§ 97a.115 Safety.

(a) The Center Director shall see that corpsmembers are not required or permitted to work, be trained, or receive services in buildings or surroundings or under conditions which are unsanitary, hazardous, or lack proper ventilation. Such work and training shall meet the standards set forth in the regulations under the Occupational Safety and Health Act at 29 CFR Parts 1910, 1926, and 1960. The reporting requirements at 29 CFR Part 1960, Subpart B shall also apply. Whenever participants are employed or trained for jobs they shall be assigned to such jobs or training in accordance with appropriate health and safety practices. Center Directors shall provide appropriate protective clothing for corpsmembers in working and training.

(b) The Center Director shall also see that the water supplies meet fire protection requirements based upon the recommendations of the National Board of Fire Underwriters and that such water supplies shall normally have a fire flow of 500 gpm for a period of two hours.

(c) The regional office shall see that safety and health inspections of every work place and training area are conducted at least annually pursuant to 29 CFR 1960.26(d).

§ 97a.116 Environmental health.

(a) Center Directors shall adhere to Federal, State, and local regulations concerning environmental health. Routine environmental health inspections of dormitories, food preparation and serving areas, and water and waste treatment facilities, when these are not part of a municipal system, shall be performed at least once a week by the center physician or his designee. The Center Director shall also arrange for formal environmental health inspections by qualified non-center personnel pursuant to § 97a.124(c) and the Forms Preparation Handbook.

(b) When non-municipal water supplies are used:

(1) These shall be adequate for the center's needs, and shall satisfy the latest U.S. Public Health Services Regulations on Drinking Water Standards (42 CFR 72.201-207).

(2) Before the construction or renovation of a water supply system, the Center Director shall consult the standards of regulations of State and local or other health authorities, and shall obtain approval of design, specifications, and construction procedures from them. Before construction or renovation is begun, engineering specifications on all water treatment processes, including their efficiency, shall be sent to the national health office through the regional office for review.

(3) The Center Director shall maintain records which shall show the amount of water treated, amount of chlorine used, daily free chlorine residual, and other data pertaining to water treatment. The Center Director shall arrange for all necessary bacterial and chemical tests to be performed by State and local health authorities with the exception of the daily routine residual chlorine test, which shall be done by center staff.

(4) Job Corps centers shall comply with the water quality and related standards of the State and with the standards established by the Federal Water Pollution Control Act, 33 U.S.C. 1151 et seq.; by Executive Order 11752; 3 CFR Part 380, (1974) and by the Environmental Protection Agency.

(5) The Center Director shall keep records of the water treatment system pursuant to standards set by the Environmental Protection Agency and local authorities, and shall call waste water treatment problems to the attention of the appropriate Environmental Protection Agency coordinator.

(6) The Center Director shall see that septic tanks are inspected by appropriate non-center personnel at least once a year.

(7) All installations owned by or leased to the Job Corps shall be designed, operated and maintained so as to conform to Federal air quality standards, including those found in Executive Order 11752, 3 CFR Part 380, (1974) and at 40 CFR Part 76.[1]

(c) Food handling practices at centers shall meet local and United States Public Health Department standards; all meat products shall meet U.S. Department of Agriculture standards; and pesticides shall not be used where food is prepared or served.

(d) Insecticides shall be used only in conformance with State and Federal pesticide laws including the regulations of the Environmental Protection Agency.

§ 97a.117 Security.

The Center Director shall take necessary steps to protect the security of corpsmembers and staff on center. These steps shall include:

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[1] 40 CFR Part 76 was removed at 40 FR 13216, March 24, 1975.

(a) Provision of staff security officers as necessary;

(b) Establishment of plans for handling any serious incident or group disturbance involving immediate danger to life, limb, or property, which shall include use, as appropriate, of any of the following measures to gain control of the situation and restore order:

(1) Placement of corpsmembers who are physically ill or emotionally disturbed in an appropriate medical facility for diagnosis and emergency treatment;

(2) Placement of corpsmembers on administrative leave pursuant to § 97a.91(g);

(3) Summoning law enforcement officials to restore order and make arrests if necessary; and

(4) Removal of involved corpsmembers for behavioral reasons to an isolation facility, either on or off center, which has previously been approved for use by the regional office. A staff member shall continuously supervise a corpsmember during all periods of isolation. Such isolation shall: (i) Not be used as punishment, and individuals shall be released as soon as their behavior ceases to be dangerous;

(ii) Be ordered only by the Center Director. Security personnel may restrain corpsmembers, but only for so long as it is necessary to bring them under control; and

(iii) Not exceed 12 hours without approval of the Center Director, based upon a recommendation from a physician or mental health professional. Complete records of all cases of isolation shall be maintained by the Center Director. A written statement of the reason for a corpsmember's isolation for more than 12 hours shall be signed by the Center Director and the physician or mental health professional and placed in the corpsmember's personnel record.

(c) The Center Director shall prohibit the presence of mace and hand guns on center except in the case of deputized security officers, who may carry guns as permitted by local statute. Rifles may be securely stored on center for use in supervised recreation activities such as rod and gun clubs.

(d) The Center Director shall have authority to determine what visitors may come onto the center and under what conditions.

§ 97a.118 Job Corps forms and documents.

(a) Job Corps shall require deliverers of Job Corps services to complete and distribute only those forms found in the Job Corps Forms Preparation Handbook.

(b) The Center Director shall see that an up-to-date library of all documents and other materials relevant to the center's operation is maintained at the center. It is suggested that the library include copies of the statutes and regulations cited in this part, Job Corps technical assistance materials, handbooks, guides, audio-visual aids and training kits. The Center Director shall also see that required forms and educational and vocational training supplies are available to staff and corpsmembers as needed. The Job Corps regional offices shall instruct Center Directors and other interested parties about how to purchase such materials.

§ 97a.119 Property management and procurement.

(a) Center operators shall establish and maintain a system for protection, preservation, maintenance and disposition of Job Corps real and personal property so as to maximize its usefulness and minimize operating, repair and replacement costs.

(b) All center operators shall comply with requirements of the Property Handbook for ETA Contractors. The operator may use its own property management standards and procedures, after prior approval of the national office, providing that the system complies with the requirements of the handbook. Those operators who use their own systems shall submit to the national office an annual inventory listing all nonexpendable property acquired in support of the center program for incorporation into the Employment and Training Administration's inventory system.

(c) When equipment purchased with Job Corps funds is involved, federally operated CCC's shall obtain prior national office approval before:

(1) Transferring such equipment from one center to another;

(2) Lending or transferring such equipment from a center to an agency program other than Job Corps; or

(3) Disposing of such equipment.

(d) The center shall maintain auditable records on all nonconsumable materials and equipment.

(e) Centers shall purchase all supplies and materials from government sources except when an excessive delay in receiving such supplies would occur, and when private purchase is more cost beneficial.

§ 97a.120 Imprest and petty cash funds.

Federally operated centers shall establish auditable imprest funds, and contract centers auditable petty cash funds for purposes such as:

(a) The corpsmember's initial allocation for living expenses;

(b) Payment of corpsmember fines and bail;

(c) Cashing corpsmember living allowance checks;

(d) Making partial payments of readjustment allowances to corpsmembers, pursuant to § 97a.83(j);

(e) Reimbursement to the Finance Center, in the event of overpayment to a corpsmember, pursuant to § 97a.83(c);

(f) Necessary transportation expenses;

(g) Emergency medical or dental attention; and

(h) Emergency purchases of clothing and shoes.

§ 97a.121 Contract center financial management and reporting.

(a) Each contract center shall complete and submit an Applied Cost Budget Report form to the regional and national offices within 30 days after the contract is signed, showing its planned monthly expenditures by line item for the first 12 months of the contract period. Thereafter, such a report shall be submitted by the end of the first month of any extension period for the next 12 months or to the end of the contract if this is less than a 12 month period. Applied Cost Budget Reports shall be revised quarterly as necessary to reflect changes in budget projections based on actual cost experience. These revised Budget Reports shall be submitted by the 14th day of the second month of the fiscal quarter. Quarterly budget revisions shall be submitted only if there has been a change from previously submitted budget projections.

(b) Each contract center shall submit monthly reports to the regional and national offices, by the 14th day of the following month. Such reports shall be the Center Financial Report, the Center Financial Status Report, the Center Financial Analysis Report, and the Center Financial Exceptions Report. Instructions for completion and distribution of these reports shall be found in the Job Corps Forms Preparation Handbook.

(c) Each center operator and each subcontractor shall maintain a financial management system which will provide accurate, current and complete disclosures of the financial results of Job Corps operations, and will provide sufficient data for effective evaluation of program activities. Fiscal accounts shall be maintained in a manner which permits any reports required by Job Corps to be prepared therefrom.

§ 97a.122 Federally operated CCC's financial management and reports.

(a) The national office shall write annually to each agency operating a CCC requesting the submission of a budget estimate for the coming fiscal year. This budget request shall include guidelines for budget preparation, based upon applicable program objectives, standards, policies, requirements, legal constraints, funding limitations, and factors which determine or affect program scope and size.

(b) Based upon the budget request, each agency shall prepare and submit to the national office by February 15 of each year a budget estimate which shall include:

(1) A completed Capital Outlay Budget Request form for each center operated by the agency. This request form shall be accompanied by a complete inventory of nonexpendable equipment on hand at each center;

(2) A completed Center Operations Budget form for each center, or an equivalent agency form;

(3) A summary budget estimate for all centers operated by the agency, listing total budget estimates for each center, such totals to include estimates for capital outlay, center operations, vocational skills training, union training contract costs, and reimbursements;

(4) A program direction funds estimate calculated at 8 percent of all other funds excluding amounts for union contracts; and

(5) Completed copies of the Object Classification form and the Detail of Permanent Positions form.

(c) The national office shall approve a firm program operating budget for each agency for the coming fiscal year, developed upon the basis of the agency's budget request and budget estimate.

(d) After national office approval of the operating budget, each agency shall submit the following reports:

(1) A monthly Report on Budget Execution for each appropriation including the current year's appropriation, expired appropriations, and lapses or "M" account appropriations. The Report on Budget Execution for the current year's appropriation shall be detailed, showing the status of amounts for center capital, center operations, and program direction.

(2) A quarterly Center Financial Report for each center, to be submitted quarterly through agency channels to the national office, and to arrive no later than the 14th day of the month following the end of each fiscal quarter;

(3) An annual fiscal report detailing for each center the total assessed value of existing facilities and equipment and the estimated value of facilities and equipment which have been approved for future purchase or construction. Such reports shall arrive at the national office no later than September 15; and

(4) An annual fiscal VST project expenditures report which shall include a center-by-center account of the total amount of VST funds spent and, of that amount, the total amount of VST funds spent on center capital improvements. This report shall arrive in the national office no later than August 15.

§ 97a.123 Audit.

(a) The Secretary of Labor, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Job Corps operators, deliverers, and their subcontractors which are pertinent to the Job Corps program for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

(b) The Secretary shall be responsible for scheduling surveys, audits or examinations of Job Corps operators, deliverers, and their subcontractors.

(c) The Secretary shall, with reasonable frequency, survey, audit or examine, or arrange for the survey, audit, or examination of Job Corps operators, deliverers, or their subcontractors using Federal auditors or independent public accountants. Such surveys, audits or examinations shall normally be conducted annually but not less than once every 2 years. For purposes of these rules, the term "independent public accountant" shall mean:

(1) A person certified or licensed as a public accountant by a regulatory authority of a State; or

(2) A person deemed a qualified public accountant by regulations published by the Secretary for a person who practices in a State where there is no current licensing procedure for accountants.

(d) Surveys, audits and examinations done by the Secretary shall conform to the standards for audit of governmental organizations, programs, activities, and functions, issued by the Comptroller General of the United States, and to guides issued by the Secretary. Surveys, audits or examinations contracted by the Secretary shall determine, at a minimum:

(1) Whether financial operations are properly conducted;

(2) Whether the financial reports are fairly presented; and

(3) Whether the available information indicates that applicable laws,

regulations, and administrative requirements have not been complied with.

§ 97a.124 General reporting requirements.

(a) Each center shall submit an accurate weekly corpsmember strength report (WCSR) by wire to the regional office and the national office to arrive no later than 11 a.m. each Thursday, covering the previous seven day period from midnight Wednesday to midnight Wednesday. A WCSR log shall be submitted monthly to the regional office. Instructions for completion and distribution of this report and the WCSR log from which it is prepared shall be found in the Job Corps Forms Preparation Handbook.

(b) Each Center Director shall compile and submit to the national health office pursuant to instructions to be found in the Job Corps Forms Preparation Handbook, reports outlining the center delivery of health services. These reports shall be submitted at the intervals specified and shall consist of:

(1) A Program Description—Narrative which describes the general operations of the medical, dental and mental health units;

(2) A Program Description—Time Distribution of Health Staff Activities, which lists all staff, contract or fee personnel employed by the center for provision of health services;

(3) A Utilization Summary, listing the number of medical, dental, and mental health services rendered to corpsmembers, organized by type of services; and

(4) A Quarterly Costs Incurred Report, describing all major categories of cost broken down by the function which incurred them.

(c) Each center, except as noted in § 97a.124(c) (3) and (4), shall simultaneously submit quarterly environmental health and safety inspection reports to the regional and national offices to be sent no later than 48 hours after the required inspection occurs. Such reports, instructions for completion of which shall be found in the Job Corps Forms Preparation Handbook, shall be the results of:

(1) An inspection of food service facilities, including food supplies, food protection, personnel, food equipment and utensils, sanitary facilities and controls, and other kitchen/cafeteria facilities;

(2) An inspection of lodging, educational, recreational, vocational, and other functional facilities, including structural matters, fire protection dormitories, lavatories, dispensary, infirmary, bedding, and recreational facilities;

(3) An inspection of water supply facilities, including water source, bacteriological examination, chlorination facility structure, coagulation and settling, filtration, physical tests, chemical tests, plumbing, storage, and the operation of treatment units. Such report shall not be required of centers which use municipal water systems; and

(4) An inspection of waste treatment facilities, including type of treatment used, and operation of treatment units. Such reports shall not be required of centers which use municipal waste disposal systems.

(d) Each center shall submit forms and comply with reporting requirements of the Property Handbook for ETA Contractors as appropriate, except that federally operated CCC's may use their own reporting forms so long as these include the same information. Instructions for completion and distribution of such forms and reports shall be found in the property handbook.

(e) Each Contract Center Director shall submit a quarterly Center Operations Report to the regional office with an information copy to the national office to arrive no later than the 15th day of the month following the end of the quarter, pursuant to instructions in the Job Corps Forms Preparation Handbook.

(f) The Center Director shall establish and maintain an internal reporting system which shall see that the Corpsmember Profile Record is continuously updated by the educational and vocational training staffs, and by the P/PEP panels.

(g) Each regional office shall submit to the national office a semi-annual report as of December 31 and June 30, covering the status of vocational training programs at all contract centers in its jurisdiction. This report shall include a list of all vocational training offerings at each center with occupational code, the number of training slots in each, and additions or deletions of training programs at each center since the last submitted report.

(h) Each Federal agency which operates CCC's shall submit to the national and regional offices:

(1) An annual Status of Center Training Programs report as of December 31 to arrive at the national office by January 15. This report shall include a center-by-center inventory of vocational training offerings, total number of corpsmembers assigned to each, total number of corpsmembers each center believes it can effectively train in each, and the number of instructors for each, specifying whether these are subcontracted or nationally contracted union instructors, or employees of the center operator. Such report shall also include the number of corpsmembers assigned to occupational exploration or prevocational training programs. Instructions for the completion of this report shall be found in the Forms Preparation Handbook;

(2) A center-by-center Semi-Annual VST Accomplishment Report as of December 31 and June 30, to be received at the national office no later than February 15 and August 15, and to include the VST project title and number, the type of project, number of corpsmember months used, and the estimated appraised value of each completed project;

(3) A center-by-center annual facilities/site development plan to arrive no later than August 1 including diagrams as of June 30 showing the location of all facilities on each center, the utilization of the facilities, and the square footage by use of each building. This plan shall also include similar data on facilities authorized by the national office for future construction; and

(4) A quarterly Manning Table Report to be received by the 14th day of the month following the end of each quarter. This report shall be an inventory of authorized positions, and actual numbers of staff on board. Instructions for completing this report shall be found in the Job Corps Forms Preparation Handbook.

(i) When a corpsmember is on probation or parole, the Center Director shall notify the youth's court representative when the corpsmember arrives at the center, is transferred to another center, is AWOL, returns from AWOL status, and is terminated. The Center Director shall also inform the court representative in the event of the corpsmember's arrest, and of the disposition made subsequent to such arrest, and shall provide the court representative with a progress report on the corpsmember's progress each time one is requested.

(j) The Center Director shall immediately report any serious incident affecting corpsmembers or the center to the regional office with an information copy to the national office. Critical incidents shall include such events as natural disasters or other emergencies which may endanger continued operation of the center; critical medical situations (§ 97a.72); arrest or taking into custody of corpsmembers or staff, in the event the arrest of staff affects center operations or the corpsmembers; any civil disorder affecting the center, and any incident which may result in unusual public interest. The Center Director shall submit periodic status reports on each such incident until it is resolved.

(k) Each Center Director shall comply with reporting requirements concerning occupational illnesses and injuries established by the regulations under the Occupational Safety and Health Act (OSHA), 29 U.S.C. 651-78, at 29 CFR, Chapter XVII, Part 1960, Subpart B.

§ 97a.125 Review and evaluation.

(a) Each center operator shall establish adequate program management for the purposes of continuous examination of the performance of its program. Such self-examination shall include performance in relation to the goals established pursuant to § 97a.23, and to the statistical data about other centers, which the regional and national offices shall make available.

(b) The regional office shall do an onsite evaluation of each center at least once per fiscal year to see that the center's performance meets the provisions of its contract or interagency agreement and is not in violation of this part. The regional office shall prepare a written report of its findings and recommendations for corrective action and submit a copy to the Center Director. A copy of each such report shall be sent to the national office within 30 days after each evaluation.

(c) The national office shall conduct an operational review of each regional office at least once per fiscal year. Such reviews shall include at least evaluations of some centers, mutually agreed upon by the regional and national offices. Such center evaluations shall be for the purposes of determining the current operational status of these centers, the regional recruitment, support, placement and transportation functions related to the centers in the region, and for assessing the center management aspects of regional operations.

Subpart H—A-95 Procedures

§ 97a.130 Notifiction of intent.

(a) The national office shall notify State and area-wide planning and development clearinghouses of any intent to fund a Job Corps project or program if:

(1) An existing Civilian Conservation Center is to be relocated;

(2) a new Civilian Conservation Center is to be established; or

(3) a contract between a union and the Job Corps national office for the training of corpsmembers in specified trades is to be signed, except when this is a renewal under an existing contract.

(b) Regional offices shall notify State and areawide planning and development clearinghouses of any intent to fund a Job Corps project or program if:

(1) An existing contract center is to be relocated;

(2) A new contract center is to be established;

(3) A contract for the operation and management of a contract center is due to expire and another contract is to be let, except when the renewal of the contract is under the provisions of the existing contract; or

(4) A substantive modification is being made to an existing contract center's contract for the operation and management of the center. For purposes of this paragraph a substantive modification shall mean:

(i) The change of a center from one sex to coeducational,

(ii) Increases or decreases of the number by 25 percent or more of a center's contracted capacity.

(iii) Increases or decreases of a center's estimated cost for performance by 25 percent or more.

[41 FR 50114, Nov. 12, 1976]

§ 97a.131 Content and description of notification of intent.

(a) The notification of intent shall contain a brief description of the project or program to be funded or modified including:

(1) The type of organization or organizations that will be eligible to submit proposals for Job Corps funds, or that will be receiving Job Corps funds;

(2) The geographic location of the project or program;

(3) The estimated cost (unless cost information must be kept confidential to insure the integrity of the competitive award process), the target population and the services to be provided; and

(4) The estimated date of the funding or modification.

(b) When an existing center is to be relocated or a new center established, the written reports required by § 97a.24 (a) (1) (i) (b) and (c) covering the site survey and environmental assessment shall be included in the modification.

[41 FR 50114, Nov. 12, 1976]

§ 97a.132 Review and comment.

(a) The notification of intent shall be sent to the appropriate clearinghouse(s) 30 days before the funding or modification as provided in § 97a.130. Clearinghouses shall promptly submit any comments they may have to the regional office or national office, as appropriate. No Job Corps contract or substantive modification subject to these A-95 procedures shall be signed until clearinghouse comments have been received or until 30 days have elapsed from the date the notification of intent was sent, whichever is earlier.

(b) Clearinghouses shall be notified by Standard Form 424 of any major action taken on the projects or programs within 7 working days of such actions. Major actions shall include awards or withdrawals. If a clearinghouse has recommended against approval of a Job Corps contract or substantive modification subject to these A-95 procedures or recommended approval only with specific or major changes, and if the recommendations are not accepted, the Standard Form 424 shall be accompanied by an explanation, in writing, of the reasons for the rejection of the recommendation.

(c) If a clearinghouse has recommended against approval of a project or program because it conflicts with or duplicates another Federal or federally assisted project, the regional or national office, as appropriate, shall consult with the Federal agency assisting the other project or program prior to approval.

[41 FR 50114, Nov. 12, 1976]

PART 97b—YOUNG ADULT CONSERVATION CORPS UNDER TITLE VIII OF THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

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AUTHORITY: Section 702(a) of the Comprehensive Employment and Training Act of 1973, as amended, unless otherwise noted.

SOURCE: 42 FR 61822, Dec. 6, 1977, unless otherwise noted.

Subpart A—General

§ 97b.1 Purpose and scope.

(a) The purpose of this part is to provide the regulations of the Department of Labor for a Young Adult Conservation Corps (YACC) under title VIII of the Comprehensive Employment and Training Act of 1973, as amended (CETA).

(b) This part contains the policies, rules and regulations pertaining to the Young Adult Conservation Corps program. The following listed provisions of Part 98 of this title also apply to the YACC, except to the extent that they conflict with the provisions of this part:

SUBPART A

(1) Section 98.21, *Nondiscrimination and equal employment opportunities;*

(2) Section 98.22, *Nepotism;*

(3) Section 98.23, *Special limitations on participant activities;*

(4) Section 98.29, *Applicability of Davis-Bacon wage rates under the Act.*

SUBPART B

(5) Section 98.32, *Responsibilities of the Secretary.*

(c) The regulations in this part govern programs funded under the Comprehensive Employment and Training Act of 1973 prior to amendment and reauthorization in 1978 (Pub. L. 95-524, 92 Stat. 1909), and are thus in many particulars superseded by regulations implementing the reauthorized Comprehensive Employment and Training Act, Pub. Law 95-524, 92 Stat. 1909, which are being codified at 20 CFR Parts 675 *et seq.* Any questions regarding the applicability of any particular regulation in Title 29 should be addressed to the Regional Administrator for the Employment and Training Administration.

[42 FR 61822, Dec. 6, 1977, as amended at 44 FR 37911, June 29, 1979]

§ 97b.2 Definitions.

Definitions for abbreviations and major terms used in this part are contained in § 94.4 of this title. The following definitions are specific to this part:

(a) "Agriculture" means the Secretary of Agriculture or his or her designee.

(b) "Area(s) of substantial unemployment" means those areas, as determined by Labor under section 204(c) of the Act (§ 94.4 of this title), plus those Indian reservations which the Secretary recognizes as qualified, and such other areas as are deemed appropriate by Labor. (Sec. 803(d))

(c) "Enrollee" means an individual who has been officially enrolled at the assigned camp/project until the time of his or her official termination from the YACC program. The term "enrollee" is synonymous with "Corps member" as used in the statute and includes individuals in both the Federal and State grant programs.

(d) "Federal program" means those camps/projects of the YACC program which are operated directly by Agriculture and Interior, as distinguished from those operated by States under the State grant program.

(e) "Interagency agreement" means the tripartite agreement, entered into by the Secretaries of Labor, Agriculture, and the Interior, which outlines their separate and joint responsibilities for operation and management of the YACC program under the Act. (Sec. 802)

(f) "Interior" means the Secretary of the Interior or his or her designee.

(g) "Labor" means the Secretary of Labor or his or her designee.

(h) "Nonresidential project" means a designated area from which daily work activities are assigned and to/from which nonresidential enrollees commute daily.

(i) "Onboard strength" means the actual number of individuals enrolled in the YACC program or any specified camp, project, or other component thereof, at a given time.

(j) "Program direction" means those general and administrative functions and services provided by Agriculture and/or Interior for overall management of the YACC.

(k) "Program operating plan" means the annual plan for operation of the overall YACC program, which is jointly developed by Labor, Agriculture, and Interior, pursuant to the Interagency Agreement. The plan consists of site selections/locations, the proportions of residential and nonresidential enrollee slots, and the budget.

(l) "Refugee/parolee" as used in § 97b.10(a) means an alien who is admitted into the United States under the Immigration and Nationality Act, and who is legally authorized to take permanent employment in the United States. (Sec. 803(b)(1)(C))

(m) "Report, financial, and program progress" as used in § 97b.4(a)(2) and (3), and outlined in § 97b.47(c), means that report which is required from Agriculture and Interior under section III G of the YACC Interagency Agreement, and which includes information on enrollee slot capacity, enrollment, and characteristics, as well as financial status, for both the Federal and State grant programs.

(n) "Residential camp" means a YACC facility established and maintained to provide 7-days-a-week, 24-hours-a-day residential support services for enrollees.

(o) "School program, full time" as used in § 97b.11(a), means any educational program, attendance at which would prevent full-time participation in scheduled work assignments required by the YACC program.

(p) "Selection, enrollee" means the Agriculture or Interior process of choosing, only from among those candidates referred to them by labor, which individuals will be enrolled in the YACC. (Sec. 803(a))

(q) "Selection, site" means the Agriculture or Interior process of choosing, in consultation with Labor, the location at which each YACC residential camp or nonresidential project will be established and operated. (Sec. 804(a))

(r) "State grant program" means those YACC camps/projects operated by States, local units of government, public and/or private nonprofit agencies or organizations, under grants made and administered jointly by Agriculture and Interior with States, in accordance with title VIII, Section 806 of the Act.

(s) "Unemployed" means, for purposes of the YACC program, persons who are without jobs and who want and are available for full-time work.

(t) "YACC" means the Young Adult Conservation Corps program, authorized by title I of the Youth Employment and Demonstration Projects Act of 1977 (Pub. L. 95-95), as title VIII of the Comprehensive Employment and Training Act of 1973, as amended.

(u) "Youth population, State's total" means the number of youth in a State ages 16 through 24, consistent with the most current Bureau of Census estimate.

§ 97b.3 Eligibility for funds.

(a) Labor shall make an interagency transfer of funds to Agriculture and Interior to carry out their responsibilities in the operation and management of YACC residential camps and nonresidential projects, in accordance with the interagency agreement between Labor, Agriculture, and Interior.

(b) Agriculture and Interior shall make available to governors or their designees 30 percent of the sums appropriated for the YACC for any fiscal year, for the operation of State and local programs. Agriculture and Interior shall apportion such sums on the basis of each State's total youth population, and consistent with the interagency agreement and the regulations of this part, and after consultation with the Governor, may enter into agreements with the Governor or his or her designee for operation of the State grant programs by:

(1) Any state Agency or institution;

(2) Any unit of general local government, or any public agency or organization or any private nonprofit agency or organization which has been in existence for at least two years. (Sec. 806)

(c) Agriculture and Interior shall promulgate regulations in the FEDERAL REGISTER, covering the State grant program, which shall be consistent with the Department of Labor regulations issued under this part, and the intergency agreement.

§ 97b.4 Funding procedures.

(a) Labor shall fund the Federal and State grant YACC program by semiannual, direct transfers of funds and obligational authority to Agriculture and Interior, using Standard Form 1151, "Non-expenditure Transfer Authorization." (Sec. 809)

(1) For purposes of program implementation, Labor made the first semiannual transfer of funds 30 days before the beginning of fiscal year 1978. The funds transferred provide, in addition to the operational funds for the first 6-month period, the full amounts for fiscal year 1978 for the State grant program and for those startup and rehabilitation and construction costs identified by Agriculture and Interior as being required for the entire year.

(2) After the initial transfer of funds, Labor shall make semiannual transfers of funds, no sooner than 30 days after receipt of each first-quarter financial and program progress report for the mid-year transfer, and no later than 30 days before the beginning of

sequent new fiscal years. (See § 97b.41 of this part.)

(3) In advance of each third quarter, after the first fiscal year, Labor shall review quarterly financial and program progress reports and use the financial data to provide for adjustments in the midyear semiannual transfer. Such adjustments will include reductions by amounts corresponding to the balances remaining unobligated by Agriculture or Interior, or both, during the fourth quarter of the previous fiscal year, since such balances are considered available resources.

Subpart B—Enrollee Recruitment, Referral, Selection, Assignment, Status

§ 97b.10 Eligibility criteria.

To be eligible for YACC, youth must be:

(a) Unemployed, at the time of application;

(b) Age 16 through 23, inclusive;

(c) Citizens or lawfully admitted permanent residents of the United States or lawfully admitted refugees or parolees; and

(d) Capable of carrying out the work to which they may be assigned. (Sec. 803(b)(1).)

§ 97b.11 Limitations on enrollment.

(a) Labor shall not refer any youth to Agriculture or Interior who is between the ages of 16 and 18, inclusive unless the applicant gives written assurance on the application form that he or she has not left a full-time school program for the purpose of enrolling in YACC. (Sec. 803(b)(2).)

(b) Agriculture and Interior shall assure that no youth is enrolled in the YACC for a period exceeding 12 months. Such period may be completed in up to three separate enrollments, so long as the youth meets the eligibility requirements at the time of each separate enrollment. If a youth reaches the age of 24 while enrolled, he or she may remain in the program to complete his or her current period of enrollment. (Sec. 803(e)(1).)

(c) Labor shall not refer any youth if he or she desires enrollment only for the normal periods between school terms. (Sec. 803(e)(2).)

§ 97b.12 Recruitment and referral procedures.

(a) Labor shall recruit candidates for YACC through the public employment service, prime sponsors qualified under section 102 of the Act, sponsors of Native American programs qualified under section 302 of the Act, sponsors of migrant and seasonal farmworkers programs under section 303 of the Act, Agriculture and Interior, and such other agencies and organizations as Labor may deem appropriate. (Sec. 803(c)) to the extent feasible, Labor shall refer, through the public employment service, an equitable number of youth for employment, based upon the total youth population of the State, from both sexes, and from all economic and racial classifications. Labor shall transmit to the SESA's Census data reflecting the numbers of youth in each State in these classifications.

(b) State employment security agencies (SESA's), through their local employment service/job service offices (ES/JS), shall enter into nonfinancial agreements with title I prime sponsors and other agencies and organizations, as they deem appropriate, for the recruitment and initial referral of candidates for YACC to the ES/JS. ES/JS offices shall identify prospective applicants from their own files and shall also take and process all applications from interested youth for subsequent referral of eligible applicants to Agriculture/Interior.

(c) Local ES/JS offices shall refer all those candidates who self-certify that they meet the eligibility criteria listed in § 97b.10 (a), (b), and (c) to individuals designated by Agriculture and Interior for selection of those to be enrolled. These candidates shall be deemed capable of performing the work which the YACC has available. Such referrals shall include all interested youth, including veterans, from all economic and racial classifications.

(d) After receipt of verification, from a camp or project director, that a youth has been officially enrolled, the

ES/JS office shall notify the appropriate recruiting agency.

(e) Labor shall review data to determine whether any adjustment in the recruitment and referral process is necessary to see that, to the extent feasible, an equitable proportion of male, female, poor, nonpoor, minority, and nonminority youth are being served, based upon the most current Census estimates of total youth population in each State.

§ 97b.13 Selection and assignment.

Agriculture and Interior representatives shall:

(a) Notify ES offices when openings are available;

(b) Select potential enrollees only from applications referred by ES/JS;

(c) To the extent feasible, select an equitable number of youth for employment, based upon the total youth population of the State, from both sexes, and from all economic and racial classifications;

(d) Notify selected applicants of the date, time, and place to which they should report for work, and that:

(1) A physical examination is required of each selectee, which either must be obtained at the selectee's expense or may be obtained by the selectee at little or no cost;

(2) They will be required to pay for their own transportation to and from the project or camp. Youths who need an advance against future salary to pay for transportation to a residential camp may request one from the camp director;

(3) A parental consent will be required for those youth who have not yet reached the age of majority;

(4) They must provide their own clothing, with the exception of certain safety equipment which will be provided.

(e) Assign youth to nonresidential projects within normal commuting distance from their homes, and youth to residential camps as near to their homes as practicable, without regard to State boundaries;

(f) Notify the referring ES/JS office, as soon as possible but no later than thirty days after receipt of application, which applicants have been selected and have reported for employment, and which have not been so selected.

§ 97b.14 Federal status of enrollees.

(a) Except as otherwise specifically provided in this part, all YACC enrollees, whether in the Federal program or the State grant program, shall not be deemed Federal employees, and shall not be subject to the provisions of law relating to Federal employment including those regarding hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits. (Sec. 805(a).)

(b) For purposes of section 5911 of title 5 of the United States Code, relating to allowances for living quarters, enrollees whose housing is provided by the Federal Government shall be deemed employees of the United States within the meaning of the term "employee" as defined in that section, and provisions of that section shall apply. (Sec. 805(a)(4).)

(c) For purposes of the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) and title II of the Social Security Act (42 U.S.C. 401 et seq.), enrollees, including State grant program enrollees, shall be deemed employees of the United States, and any service performed by a person as an enrollee shall be deemed to be performed in the employ of the United States. (See 805(a)(1))

(d) For purposes of chapter 171 of title 28 of the United States Code, relating to tort claims procedures, enrollees, including State grant program enrollees, shall be deemed employees of the United States within the meaning of the term "employee of the Government" as defined in section 2671 of title 28, United States Code, and provisions of that chapter shall apply. (Sec. 805(a)(3))

(e) For purposes of subchapter 1 of chapter 31 of title 5 of the United States Code, relating to compensation to Federal employees for work injuries, enrollees, including State grant program enrollees, shall be deemed employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and provisions of that subchapter shall apply except that the term "performance of duty" shall not include any act of an enrollee while absent without authorization from his or her assigned post of duty, but shall include time spent participating in an activity (including an activity while on pass or during travel to or from such post of duty) authorized by or under the direction of YACC program staff. (Sec. 805(a)(2))

(1) Residential enrollees are generally considered under FECA to be Federal employees from the time each begins Government authorized travel to the assigned YACC camp, to the time each completes Government authorized travel after termination from the program. During this period, residential enrollees are generally considered, under FECA, to be in "performance of duty" at all times, during any and all of their activities, 24 hours a day, 7 days a week, except when they are absent without authorization. Whether a residential enrollee is in "performance of duty" shall be determined by the Office of Workers' Compensation Programs (OWCP).

(2) Nonresidential enrollees, after official enrollment, are generally considered, under FECA, to be in "performance of duty" as Federal employees from the time they arrive daily at the designated area from which activities are assigned, until they leave such designated area or activity. Nonresidential enrollees are generally not covered by FECA while commuting between a designated area/authorized activity and their residence. Whether a nonresidential enrollee is in "performance of duty" shall be determined by OWCP.

§ 97b.15 Federal Employees' Compensation procedures.

(a) Whenever a youth is injured, develops an occupationally related illness, or dies, the camp/project director shall immediately comply with the procedures set out in the Employment Standards Administration regulations at 20 CFR Chapter 1. The camp/project director shall also see that a thorough investigation of the circumstances, and a medical evaluation, are made, and shall see that required forms are filed with the appropriate OWCP district office.

(b) If a youth dies, the camp, or project director, in addition to making proper notifications, in accordance with procedures established by Agriculture and/or Interior, shall:

(1) Notify the appropriate district office of OWCP of the death and the circumstances surrounding it, and file appropriate forms with that office; (Sec. 805(a)(2) of the Act);

(2) Inform the next of kin of any benefits which may be available from Federal Employees' Compensation. The camp/project director shall notify them that the Government shall pay for expenses involved in the preparation and transportation of the remains to a mortuary in the area selected by the next of kin, but not for other funeral expenses;

(3) Consult the decedent's family as to the final disposition of the remains before any final action is taken in this regard; and

(4) If the next of kin refuses to accept the remains, arrange for burial at a site close to the camp/project and at a cost not to exceed the amount authorized in section 8134(a) of the Federal Employee's Compensation Act (FECA).

(c) Funds for the payment of approved FECA claims shall be retained in the Labor YACC account for the purpose of paying such claims.

§ 97b.16 Tort claims.

(a) In the event an enrollee is alleged to be involved in the damage, loss or destruction of the property of others or of causing personal injury to or the death of other individual(s) while in the performance of duty, claims may be filed by the owner(s) of the property, the injured person(s), or by a duly authorized agent or legal representative of the claimant to the camp/project director who shall collect all of the facts and submit the claim for a decision to the appropriate Regional Solicitor, Labor, or the Associate Solicitor for Employee Benefits, Labor, for processing pursuant to 29 CFR part 15.

(b) Tort claims shall be made on Standard Form 95, the Claim for Damage or Injury form or a similar document, supported by necessary justification.

(c) Funds for the payment of approved Tort claims shall be retained in the Labor YACC account for the purpose of paying such claims.

§ 97b.17 Enrollee claims for lost, stolen or damaged personal property.

(a) Agriculture or Interior may pay claims to enrollees for lost, damaged, or stolen personal property, up to a maximum of $200, when such loss is not due to the negligence of the enrollee. Enrollees shall always be compensated for losses when they are the result of a natural disaster or when the enrollee's property is in the protective custody of the camp director, which shall always be the case when an enrollee in a residential camp is absent from the camp for 24 hours or more. The camp/project director shall file such claims with Agriculture or Interior for a determination on the claim and promptly notify the enrollee of the determination.

Subpart C—Program Operation

§ 97b.20 Camp/project site selection, location.

Consistent with the interagency agreement, Agriculture and Interior, in consultation with Labor, shall select the site of each residential camp and nonresidential project.

(a) Nonresidential projects and those residential camps providing for nonresidential participation shall be located within normal commuting distances from the geographic centers of areas of substantial unemployment designated by the Secretary of Labor. Labor shall annually provide Agriculture and Interior with a listing of areas of substantial unemployment.

(b) To the maximum extent feasible, residential camps shall be located in areas where existing residential facilities for the enrollees are available. Whenever appropriate, existing but unoccupied or underutilized Federal, State, or local government facilities and equipment shall be utilized for YACC camps with the approval of the Federal agency, State or local government involved. (Sec. 804(d)(2))

§ 97b.21 Camp/project operation and management.

(a) In keeping with the interagency agreement, Agriculture and Interior shall, in the case of the Federal program, have responsibility for, and, in the case of the State grant program, issue guidelines covering:

(1) The identification of a director or supervisor in charge of each YACC residential camp or nonresidential project;

(2) The staffing, operation and management of each YACC camp and project;

(3) Selection of enrollees;

(4) Determination of enrollees' work assignments, subject to the health, safety, and work standards established by Labor in §§ 97b.22, 97b.23, 97b.24, and 97b.25 of this subpart;

(5) Enrollee discipline;

(6) Enrollee termination; and

(7) Operating an effective program at each camp and project.

(b) Agriculture and Interior may provide for such transportation related to camp and/or work project operations, loading, subsistence, medical treatment, and other services, supplies, equipment, and facilities as they may deem appropriate to carry out the purposes of this part consistent with the regulations mentioned in paragraph (a)(4) of this section, regarding health, safety and work standards. (Sec. 804(d)(1))

§ 97b.22 Work projects and assignments.

(a) YACC enrollees shall perform work on projects in such fields as:

(1) Tree nursery operations, planting, pruning, thinning, and other silvicultural measures;

(2) Wildlife habitat improvements and preservation;

(3) Range management improvement;

(4) Recreation area development, rehabilitation, and maintenance;

(5) Fish habitat and culture measures;

(6) Forest insect and disease prevention and control;

(7) Road and trail maintenance and improvements;

(8) General sanitation, cleanup and maintenance;

(9) Erosion control and flood damage;

(10) Drought damage measures; and

(11) Other natural disaster damage measures. (Sec. 804(a))

(b) Agriculture and Interior shall undertake to assure that projects on which work is performed under this part are consistent with the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and such other standards relating to such projects as the Secretaries of Agriculture and Interior shall prescribe, consistent with other provisions of Federal law. (Sec. 804(b)(1))

(c) To the maximum extent practicable, Agriculture and Interior shall establish projects that:

(1) Are labor-intensive;

(2) Are projects for which work plans can be readily developed;

(3) Are able to be initiated promptly;

(4) Are productive;

(5) Are likely to have a lasting impact both as to the work performed and the benefit to the youths participating;

(6) Provide work experience to participants in skill areas required for the projects; and

(7) Are similar to activities of persons employed in seasonal and part-time employment in agencies such as the National Park Service, United States Fish and Wildife Service, Bureau of Reclamation, Bureau of Land Management, Bureau of Indian Affairs, Forest Service, Bureau of Outdoor Recreation, and Soil Conservation Service. (Sec. 804(c))

(d) Agriculture and Interior shall assure that YACC program activities will not result in the displacement of employed workers, or impair existing contracts for services, or result in the substitution of YACC funds for other funds in connection with work that would otherwise be performed.

(e) Agriculture and Interior shall place individuals employed as enrollees into jobs which will diminish the backlog of relatively labor-intensive projects which would otherwise be carried out if adequate funding were made available. (Sec. 804(b)(2))

(f) Agriculture and Interior shall see that YACC enrollees do not, at the same time, share common facilities or property, or work with members of the Job Corps, under title IV of the Act, except in emergency situations, as outlined in paragraphs (g) and (h) of this section.

(g) Agriculture and Interior may authorize and utilize enrollees who are at least 18 years old to provide assistance and to perform work in emergency disaster situations. Camp/project directors may ask enrollees to volunteer, but may not require them to participate while any natural disaster is occurring. They may, however, require enrollees to perform work on damage which has been caused by such disasters. In determining the eligibility of enrollees for performing such work, camp/project directors shall follow regular Agriculture and Interior policies and procedures, insofar as they are consistent with health, safety, and work standards established by Labor in sections 97b.22, 23, 24, and 25 of this subpart. Agriculture and Interior shall arrange, to the extent feasible, for any added expenses consequent to such assistance to be borne by the benefiting organization. If funding is not available from the benefiting organization, Agriculture and Interior may use YACC operational funds to provide the emergency assistance, subject to the availability of such funds.

(h) Camp and project directors shall see that no enrollee participates in emergency relief efforts:

(1) In connection with strikes or labor stoppages; or

(2) On private property except as incidental to authorized emergency work as outlined in paragraph (g) of this section.

(i) Camp and project directors shall see that the assignment of enrollees under 18 years of age to work activities is in compliance with the Hazardous Occupation Orders issued pursuant to the Fair Labor Standards Act and set forth at 29 CFR 570.50 et seq.

§ 97b.23 Safety and health.

(a) Agriculture and Interior shall assure that enrollees are not required or permitted to work or receive services in buildings or surroundings or under conditions which are unsanitary, hazardous, or lack proper ventilation. Camp and project directors shall see that such work or services are conducted or provided in accordance with appropriate Agriculture or Interior policies and procedures, and are consistent with the standards set forth in the regulations under the Occupational Safety and Health Act at 29 CFR Parts 1910, 1926, and 1960 Subpart B.

(b) Agriculture and Interior shall conduct safety and health inspections of every residential camp and work project area connected therewith, at least annually, consistent with the requirements in 29 CFR 1960.26(d).

(c) Camp/project directors shall issue such items of protective and safety clothing and equipment to enrollees as are necessary and appropriate to ensure a maximum of safety in all work situations. Camp/project directors shall also see that proper use of such clothing and equipment is taught to enrollees and enforced. Enrollees are expected to provide all other clothing.

(d) Camp/project directors shall provide complete safety orientation to enrollees in all work situations to alert them to any hazards to which they may be exposed. (Sec. 805(b)(3))

§ 97b.24 Residential camp living conditions.

(a) Residential camp directors shall provide for residential support facilities and services which ensure healthful and secure living conditions, 7 days a week, 24 hours a day.

(b) Agriculture and Interior shall assure that all residential facilities are well maintained and shall comply with applicable Federal, State, and local safety, health, and housing codes for multipurpose group residences.

(c) Agriculture and Interior shall see that adequate supervision and assistance are provided which are adequate to ensure the safety and health of the enrollees. (Sec. 805(b)(3))

§ 97b.25 Enrollee wages and hours of work.

(a) Agriculture and Interior shall assure that each enrollee, in both the Federal and State grant programs, is paid at the same hourly rate, which shall be at the Federal minimum rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(b) The following exceptions to paragraph (a) of this section shall apply:

(1) Agriculture and Interior shall provide for an additional cost-of-living allowance for enrollees in the State of Alaska, not to exceed 25 percent of the Federal wage rate;

(2) Wages in the Commonwealth of Puerto Rico, the Virgin Islands, and American Samoa shall be consistent with provisions of Federal, State, or local law, otherwise applicable. Wages in the Trust Territory of the Pacific Islands shall be consistent with local law, except on Eniwetok Atoll and Kwajalein Atoll where Section 6(a)(1) of the Fair Labor Standards Act applies.

(c) As an incentive, camp and project directors may authorize incremental increases, above the minimum wage specified in paragraphs (a) and (b) of this section, for a limited number of enrollees, to reflect additional responsibilities or competencies. For this purpose, two promotion categories may be established: (1) Enrollee Leader, and (2) Enrollee Assistant Leader. No more than 15 percent of the enrollment of any individual camp or project shall be given such increases. For each enrollee thus compensated, the wage increase shall not exceed 50 percent, nor be less than 15 percent of the applicable basic hourly minimum wage, as outlined in paragraphs (a) and (b) of this section.

(d) Camp and project directors shall reduce enrollee wages for each hour of unexcused absence.

(e) Camp directors may require enrollees assigned to residential camps to assume responsibility for housekeeping and maintenance duties. Such duties shall not be considered compensable, unless scheduled during the regular work day, in which case enrollees shall be paid at the same rate as for regular work assignments.

(f) Camp and project directors shall see that:

(1) Only those enrollees who are qualified in accordance with § 97b.22(g) are allowed to participate in fire suppression activities;

(2) Such enrollees are used only to supplement compensated firefighters, and are paid at the rates set by Agriculture and Interior as established in pay plans for emergency firefighters, in accordance with established agency policies, procedures and practices;

(3) No YACC enrollee is required to work for a greater number of hours per day than other firefighters.

(g) Agriculture and Interior shall see that no enrollee is required to work for more than 8 hours per day or 40 hours per week, except that camp and project directors may authorize overtime, which shall not exceed 10 such hours per week, in which event they shall pay them at the same rate as specified in paragraphs (a) and (b), or (f)(2) when applicable, of this section. (Sec. 805(b))

§ 97b.26 Allowable deductions from enrollees' wages.

(a) Agriculture and Interior shall see that enrollees assigned to residential camps are charged for food and lodging, at the rate of 75 cents per meal and 75 cents per day for rent. Project and camp directors shall arrange for payment of such charges by payroll deduction. Agriculture and Interior shall see that such deductions remain in the applicable appropriation or fund.

(b) Residential camp directors may arrange, through payroll deductions, for the reimbursement, by enrollees, of initial travel advances provided to them in the circumstances outlined in § 97b.13(d)(2).

(c) Camp and project directors shall see that:

(1) Income taxes are withheld from enrollee wages pursuant to the Federal Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) (Sec. 805(a)(1)), and such State income tax laws as are applicable, and that any forms required to effect income tax deductions or withholding exemptions are provided to and completed by each enrollee; and

(2) Wage and tax statements are provided to enrollees.

(d) Deductions shall not exceed the limit as set forth in title III of the Consumer Credit Protection Act (15 U.S.C., 1671 et seq.).

§ 97b.27 Enrollee payroll procedures.

Agriculture and Interior shall assure that the payroll procedures for both the Federal and State programs are the same. State and local grantees shall utilize the payroll forms used by the Federal Government for payment of enrollees in accordance with the regulations/instructions issued by Agriculture or Interior, as appropriate.

§ 97b.28 Enrollee leave.

(a) Agriculture and Interior shall provide enrollees with paid annual leave at a rate of 4 hours for every full pay period which shall consist of two 40-hour work weeks. Accrual shall commence at the beginning of the first full pay period after the day of official enrollment, and shall end on the date of official termination. Such leave may be accrued up to a maximum of 13 days for 52 weeks of uninterrupted enrollment. Enrollees may use accrued leave at any time, subject to the approval of the camp/project director, but shall use all accrued leave prior to each formal termination. The date of formal termination shall be the final date upon which the youth is eligible to receive pay, whether this is a work day or an accrued but unused leave day.

(b) The camp or project director may grant administrative leave with pay, at his or her discretion, for enrollee participation in job search and employment development activities. Such leave with pay is to be counted as time in employment.

(c) The camp or project director may grant emergency or administrative leave, without pay, at his or her discretion. Such leave without pay is not counted as time in employment.

(d) Camp and project directors shall pay enrollees for all official holidays, if they are in a pay status for 8 hours on the workdays immediately preceding and following the holiday. Approved leave with pay shall count as time in employment for official paid holidays. Such holidays shall not count as annual leave. (Sec. 805(b))

§ 97b.29 Resolution of grievances and complaints filed by enrollees.

Agriculture and/or Interior shall establish plans and procedures, subject to approval by Labor, for resolving any issues or complaints filed by youths, from the time at which their referrals are received from ES/JS to the time of formal termination. These plans and procedures shall encompass issues or complaints such as those regarding adverse action, civil rights, equal employment opportunity, enrollment or upgrading which arise between their Departments and any enrollee. Such procedures shall provide the enrollee with:

(a) An opportunity for an informal conference to resolve the issue;

(b) A notice setting forth the grounds for any adverse action proposed to be taken against him or her and giving him or her an opportunity to respond;

(c) An opportunity for a formal hearing and, if the enrollee is not satisfied, with an opportunity for an appeal; and

(d) An offer of assistance in the preparation for hearings and appeals. (Sec. 802)

§ 97b.30 Cooperation with agencies and institutions.

(a) Agriculture and/or Interior shall, to the extent feasible, arrange for local linkages with educational systems, CETA and other employment and training programs, employment service offices, local apprenticeship sponsors and information centers, and employers, in order to arrange for the provision of available services to enrollees, both during nonwork hours while enrolled, and after termination from YACC. Camp/project directors shall be encouraged to establish procedures to ensure that enrollees are made aware of established linkages and related information and opportunities.

(b) Camp and project directors shall notify appropriate local ES/JS offices regarding enrollee status, in advance of the end of the enrollment period or upon termination and shall, to the extent feasible, assist the enrollee in making contact with ES/JS or other organizations to enhance the possibilities for placement.

(c) Labor shall work with the Department of Health, Education, and Welfare to make suitable arrangements whereby academic credit may be awarded by educational institutions and agencies for competencies derived from work experience obtained through the YACC program. Labor shall also encourage camp and project directors, through Agriculture and Interior, to make necessary arrangements with local education agencies so that academic credit for such work experience may be granted. (Sec. 804(e))

Subpart D—Administrative Provisions

§ 97b.40 Interagency agreement.

Labor shall administer the YACC program through an interagency agreement with Agriculture and Interior. (Sec. 802)

§ 97b.41 Annual program operating plan.

(a) In advance of each fourth fiscal quarter, Labor shall review the quarterly financial and program progress reports received during the fiscal year, to form the basis for joint interagency development of the program operating plan for the next fiscal year, as outlined in this section.

(b) Labor, Agriculture, and Interior shall jointly begin the development of an annual program operating plan at least 90 days in advance of the beginning of each fiscal year. This plan shall include:

(1) The camp/project site selections/locations arrived at in consultation, in accordance with the interagency agreement;

(2) The proportions of residential and nonresidential slots; and

(3) The budget for the new fiscal year.

(c) Labor shall approve the proportion of residential and nonresidential slots, and the budget before transfer of funds can occur.

For the initial and subsequent budgets, the cost per unit (per-slot for fiscal years 1978 and 1979, and per-enrollee-year for subsequent years) will be reflective of all programs costs, including, but not limited to: camp/project operating costs; enrollee wages and benefits; recruitment; selection, and placement support costs; transportation; annual capital replacement costs; program direction expenses; and start-up costs, including those for rehabilitation, construction, purchase of real property, lease(s), equipment and furnishings, vehicles, transfers of station, and initial planning.

§ 97b.42 Directives, guidelines, controls and records.

Labor, Agriculture, and Interior shall establish procedures to ensure that operational directives, guidelines, controls, and records of the YACC program are established, promulgated, and maintained, in accordance with their established policies and procedures, and consistent with the requirements of this part.

§ 97b.43 Enrollee records.

Camp and project directors shall establish and maintain enrollee records, according to regular Agriculture and/or Interior policies and procedures, subject to their regulations under the Freedom of Information Act, and the Privacy Act of 1974.

§ 97b.44 Financial management.

Based upon each annual program operating plans, Agriculture and/or Interior shall assume financial responsibility, authority and accountability for all the camps and projects respectively operated under the YACC program within the total program costs per slot or enrollee year approved by Labor.

§ 97b.45 Property management.

Agriculture and/or Interior are responsible for real and personal property procurement, management, and accountability. When accountable property, other than real property, is declared excess to the needs of the YACC program, Labor shall be given first preference for use of the property in other Labor programs.

§ 97b.46 Procedures for resolving complaints.

(a) Agriculture and Interior shall receive and resolve complaints concerning alleged violations of their responsibilities as outlined in these regulations and the Act from any person or any unit of Federal, State, or local government.

(b) All such complaints shall be filed with Agriculture or Interior according to procedures established by those agencies.

§ 97b.47 Reporting requirements.

Agriculture and Interior shall compile and submit to the Department of Labor, Office of Youth Programs, and reports listed below, with data for Federal and State grant programs separately delineated:

(a) A copy of the monthly report on budget execution (Standard Form 133), as submitted to the U.S. Treasury Department;

(b) A monthly report of onboard strength, which shall be due no later than 15 calendar days after the end of each month, and which shall include the actual number of individuals enrolled on the last day of the reporting month;

(c) A quarterly financial and program progress report, in accordance with the format outlined in Appendix No. 1 of the YACC Interagency Agreement, which shall be due no later than 30 calendar days after the end of each quarter, and shall consist of:

(1) A Federal program summary, supported by individual reports of the Federal program by State;

(2) A State grant program summary, supported by individual State reports;

(3) A combined Federal/State summary report.

§ 97b.48 Assessment/monitoring.

(a) Agriculture and Interior shall plan and conduct regularly scheduled onsite assessments and such other interim visits as are necessary to monitor camp/project performance, and to insure effective accomplishment of YACC program objectives by all levels of management charged with program responsibilities.

(b) Labor, in consultation with Agriculture and/or Interior, may participate in any onsite monitoring or assessment effort.

§ 97b.49 Overall program evaluation.

Labor, in accordance with a plan developed in consultation with Agriculture and Interior, shall fund and conduct such evaluations of the YACC program as deemed necessary to determine whether the program is meeting statutory objectives.

PART 98—ADMINISTRATIVE PROVISIONS FOR PROGRAMS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

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AUTHORITY: Comprehensive Employment and Training Act of 1973, as amended, (Pub. L. 93-203), 87 Stat. 839; Pub. L. 93-567, 88 Stat. 1845), sec. 702(a), unless otherwise noted.

SOURCE: 42 FR 55760, Oct. 18, 1977, unless otherwise noted.

Subpart A—Grant Administration

§ 98.1 General.

(a) This Subpart A describes Federal requirements relating to the administration of grants by grantees (secs. 703(14) and 713). Administrative requirements found in this subpart apply to all programs under the Act unless stated to the contrary for any specific program.

(b) The Secretary will provide each grantee with the specific procedures to be followed to comply with the requirements of this Subpart A (secs. 703 (14) and 713).

(c) Statutory authority for the regulations contained in this Part 98 may be found in section 702(a) of the Act, as well as other substantive provisions of the Act. Applicable statutory provisions, other than section 702(a), are noted generally in these regulations.

(d) The regulations in this part govern programs funded under the

Comprehensive Employment and Training Act of 1973 prior to amendment and reauthorization in 1978 (Pub. L. 95-524, 92 Stat. 1909), and are thus in many particulars superseded by regulations implementing the reauthorized Comprehensive Employment and Training Act, Pub. Law 95-524, 92 Stat. 1909, which are being codified at 20 CFR Parts 675 *et seq.* Any questions regarding the applicability of any particular regulation in Title 29 should be addressed to the Regional Administrator for the Employment and Training Administration.

[42 FR 55760, Oct. 18, 1977, as amended at 44 FR 37911, June 29, 1979]

§ 98.2 Payment.

(a) Advance payments will be made to all grantees able to satisfy the following criteria established consistent with Treasury Department regulations (31 CFR Part 205), and Attachment J of FMC 74-7 (34 CFR Part 256[1]): (1) Demonstrated willingness and ability to establish procedures for minimizing the time elapsing between the transfer of cash and its disbursement by the grantee; (2) establishment of substantially identical procedures for advances to subgrantees and other secondary recipients; (3) A financial management system able to satisfy the requirements of § 98.5; and (4) performance of all other obligations incident to the receipt of funds under the Act to the satisfaction of the RA. Advance payments may be made by means of a letter of credit or a request for advance.

(b) When the grantee is unable or unwilling to satisfy the criteria in paragraph (a) of this section, the preferred method for making payments shall be reimbursement of disbursements made using the grantee's own cash.

(c) When the grantee contracts under a Joint Funding Simplification Program he may authorize direct advances from the Department of Labor. These advances may be by letter of credit or U.S. Treasury check under that contract.

(d) In the event that a grantee cannot meet the criteria for advance payments described in paragraph (a) of this section and reimbursement as described in paragraph (b) is not feasible, arrangements may be made to provide cash on a working capital advance basis, as described in § 98.4(c).

(e) Grantees should use minority banks and encourage subgrantees and contractors to do the same. (Attachment A of FMC 74-7.)

§ 98.3 Letter of credit.

(a) When a grantee is able to satisfy the criteria described in § 98.2(a), grants will be financed by means of a letter of credit when the following conditions are met:

(1) The grant is for $250,000 or more;

(2) A continuing relationship exists for at least 12 months;

(3) The grantee can assure that the timing and amount of drawdowns will be as close as possible to disbursement needs as provided in the Department of the Treasury Regulations found at 31 CFR 205; and

(4) The grantee's accounting system will meet the recordkeeping and reporting requirements of this subpart.

§ 98.4 Payment by Treasury check.

(a) A grantee which does not meet the requirements for the letter of credit must submit a request for advance or reimbursement in order to obtain its cash requirements as provided in Attachment H of FMC 74-7. The RA will determine whether such Treasury check payments will be made on an advance, working capital advance, or reimbursement basis. In making such a determination, the RA will consider the grantee's ability to satisfy the criteria of § 98.2(a), particularly the accounting and recordkeeping capabilities of its financial management system.

(b) Grantees are authorized to submit the request for advance or reimbursement at least monthly.

(c) Grantees ineligible for advance financing under either the letter of credit or request methods may be provided cash on a working capital advance basis when they lack sufficient working capital to be placed on the reimbursement basis. Under this procedure, a cash advance is made to the grantee to cover its expected disbursements for an initial period generally geared to the grantee's disbursing cycle. The grantee is thereafter reimbursed for its actual cash disbursements reported on the Request for Advance or Reimbursement form OMB No. 29-RO223.

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[1] 34 CFR Part 256 was removed at 41 FR 52454, Nov. 30, 1976.

(d) Prime sponsors other than State and local governments which are operating programs under Titles I and II may be required by the RA to maintain special bank accounts, as provided in 41 CFR 1-30, 413-414. Where special accounts are required, all receipts of grant funds must be deposited in the special account and all grant disbursements must be made from the account. The RA may also require the use of special bank accounts by secondary recipients if the prime sponsor is required to maintain a special account unless the secondary recipient is a State or local government unit.

(e) Advance by Treasury check will provide for advance payments through use of predetermined payment schedules or upon the request of the grantee. When the request method is used, payments will be made to a grantee based upon a schedule contained on the Request for Advance or Reimbursement.

§ 98.5 Financial management systems.

(a) Each grantee and subgrantee shall maintain a financial management system which complies with the standards in Attachment G of FMC 74-7. In general this means the system will provide accurate, current, and complete disclosure of the financial results of each program activity by title of the Act, including Title II program activities by each area of substantial unemployment; provide the ability to evaluate the effectiveness of program activities; include an audit program which provides for the audit of subgrantees and contractors to determine the fiscal integrity of financial transactions, as defined in § 98.6(e); and meet the reporting requirements of this subpart.

(b) Each grantee and subgrantee shall maintain its fiscal accounts in a manner sufficient to permit the reports required by the Secretary to be prepared therefrom.

(c) To be acceptable for audit under the Act a Report of Federal Cash Transactions, Monthly Progress Report, and Financial Status Report shall be:

(1) Current as of the cutoff date of the audit;

(2) Taken directly from or linked by worksheet to the sponsor's books of original entry;

(3) Traceable to source documentation of the unit transaction; and

(4) On an accrual basis as provided for in FMC 74-7 Attachment H (with the exception of the Report of Federal Cash Transactions). In cases where these financial records do not meet these requirements, the auditor shall submit a letter to the contracting officer within ten days of such a determination delineating the reason for such a determination and recommendations as to the action required to place the records in condition for audit.

§ 98.6 Audit.

(a) The Secretary of Labor, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the State and local government and their subgrantees and contractors which are pertinent to a specific grant program under the Act for the purpose of making surveys, audits, examinations, excerpts, and transcripts (sec. 713(2)).

(b) The Secretary shall be responsible for scheduling surveys, audits or examinations of grantees and their subgrantees and contractors. These schedules will be coordinated with the grantee, to the extent practical.

(c) The Secretary shall, with reasonable frequency, survey, audit or examine, or arrange for the survey, audit or examination of grantees and their subgrantees and contractors using city or state auditors; or certified or licensed public accountants. Such surveys, audits, or examinations shall normally be conducted annually but not less than once every two years. The cost of the Secretary's audits shall be funded by the Department of Labor and shall not be a part of the grantees administrative cost under the grant.

(d) Surveys, audits and examinations will conform to *The Standards for Audit of Governmental Organizations, Programs, Activities, and Functions,* issued by the Comptroller General of the United States and guides issued by the Secretary. Surveys, audits or examinations contracted by the Secretary will conform, at a minimum to the first element of the Comptroller General's Standards: An audit to determine (1) whether financial operations are properly conducted, (2) whether the financial reports are fairly presented, and (3) whether the available information indicates that the entity has complied with applicable laws, regulations, and administrative requirements. (In addition, selected Federal audits will include reviews of the economy and efficiency and/or program results of programs under the Act. As a result of such audits a report including appropriate recommendations will be issued to the Employment and Training Administration). Existing audit systems, where acceptable under the Comptroller General's Standards, such as State audits of city and county activities will be used to the maximum possible extent (sec. 713(1)).

(e)(1) Each grantee shall establish and maintain an audit program for its contractors and subgrantees to the extent necessary to insure adequate financial management and conformance with Federal requirements. The Governor shall also establish and maintain such an audit program for vocational education services and activities funded pursuant to § 95.2(c)(4).

(2) Each grantee shall conduct at least once every two years an independent audit of each contractor or subgrantee providing activities and services amounting to a cost of $100,000 or more during one grant year. Audits of those subgrantees or contractors providing activities and services under $100,000 may be conducted on a sample basis as coordinated with and approved by the Regional Administrator for Audit. Of the awards of less than $100,000, the sample selected shall at least 25% of the total number of awards of 25 percent of the total dollars awarded during a two-year period. The auditoring of contractors and subgrantees on a sample basis in no way lessens the prime sponsor's responsibility to insure that program activities and related costs incurred by contractors and subgrantees are in compliance with Federal requirements as stated in § 98.5(a). Fixed price contracts for nonprogram, administrative type procurements such as typewriter maintenance, administrative supplies, etc., do not require independent audits. The two-year audit period shall begin with Fiscal Year 1976.

(3) Audits may be conducted by certified or licensed public accountants under contract to the grantee, by the grantee, or by State and local government audits staff. The audits required in paragraph (e)(2) of this section, shall be conducted in accordance with the provision of paragraph (d) of this section. Copies of reports of audits conducted to comply with paragraph (e)(2) of this section shall be sent to the Regional Administrator for Audit.

(4) The cost of these audits are allowable and shall be charged to the Administration cost category.

(f)(1) Upon making a new Annual Plan or a significant increase in the funding level of an on-going grant, the Secretary may conduct a preliminary audit survey to evaluate the adequacy of the grantee's accounting system and internal controls as established by these regulations including but not limited to §§ 95.14, 98.8, 98.18, 98.24, 98.25, 98.26, 98.27, and 98.31.

(2) On the basis of the findings, conclusions and recommendations of the survey, the grantee will be advised in writing what action, if any, is needed to satisfy Department of Labor requirements.

(g)(1) Audit reports shall be written in the format prescribed by the Department of Labor Audit Program. Previous audit reports considered relevant and the full text of any sponsor's comments will be included as an appendix to the report.

(2) Department of Labor audit reports will be distributed by the appropriate Department Regional Administrator for Audit.

(3) Grantees shall respond in writing to the findings, conclusions and recommendations in the audit reports when requested to do so by the RA. Unless an extension of time is expressly granted, the response shall be submitted to the responsible Regional Administrator with a copy to the responsible Regional Administrator for Audit within thirty calendar days from the date of Department of Labor notification of the findings and recommendations.

(4) The grantee may take exception to particular findings and recommendations. The rationale for such exceptions should be included in the response. The response should point out corrections already made and state what action is proposed and the estimated completion date of such action.

(5) The RA will consider the grantee's response and any additional information provided by the prime sponsor when determining whether specific expenditures should be disallowed. The appropriate RA will notify the prime sponsor in writing of the determination to disallow expenditures.

§ 98.7 Reporting requirements in general.

(a) Each grantee will be required to submit four periodic reports which will be used by the Secretary to assess its performance in carrying out the objectives of the Act. These four reports are: The Program Status Summary, The Financial Status Report, The Quarterly Summary of Participant Characteristics and The Report of Federal Cash Transactions. In addition, grantees may from time to time be required to prepare and submit reports requested by other Federal agencies for the performance of the legal responsibilities of these agencies. Detailed descriptions of the four reports are in the *Forms Preparation Handbook.*

(b) In order to avoid duplication of payments by unemployment insurance and CETA programs, prime sponsors shall, upon request, provide SESA's a current list of all CETA participants enrolled in their programs receiving wages.

§ 98.8 Program Status Summary, Financial Status Report and Monthly Report.

The Program Status Summary (PSS) and the Financial Status Report (FSR) will be used to measure accomplishments in achieving objectives stated in the Program Planning Summary and the Budget Information Summary, respectively.

(a) Program Status Summary. Each grantee will include the following items in this report together with a comparison of the same items as they appear in the Program Planning Summary:

(1) The total number of enrollments with granted funds during the grant period;

(2) The total number of individuals (participants) placed in unsubsidized employment at termination from the project and the number entering school, other training or military service;

(3) The level of enrollment associated with each program activity;

(4) The number of individuals within each significant segment of the population being served by the program; and

(5) The objectives and accomplishments other than those established by the Secretary. If a prime sponsor or eligible applicant elects to include these other activities in its report, they will be used by the Secretary in his evaluation of the performance of the prime sponsor or eligible applicant's program.

(b) Financial Status Report. Each grantee will submit a Financial Status Report (FSR) which includes the following items:

(1) The distribution of total accrued expenditures among program activities and percent of plan accomplished;

(2) Indirect costs for the grant period to date;

(3) The distribution of total accrued expenditures to date by cost category; and

(4) A certification of the correctness of the costs reported.

(c) If performance goals are not being achieved, the RA may request additional information from grantees including reasons for the failure to achieve the goals.

(d) The reports required by paragraphs (a) and (b) of this section shall be prepared to coincide with the ending dates of Federal fiscal year quarters. These reports shall be sent by the grantee to be received by the RA no later than 30 days after the end of the reporting period. If a grantee's grant period ends at a date other than the Federal fiscal year quarter, a fifth set of reports, covering the entire grant period will be required. These reports shall also be submitted by the grantee to the Governor of the State.

(e) Accountability must be maintained by the grantee for each of the activities authorized under the Act. Therefore, separate reports will be required for the Title I Grant, the Title II Grant and the special grant.

(f) The Secretary reserves the right to require the submittal of these reports by grantees more frequently than quarterly in cases of major deviation from the Program Planning Summary and Budget Information Summary.

(g) *Monthly Progress Report.* Grantees operating a Title II or VI funded program shall be required to submit the Monthly Progress Report (MPR) on which they will record the cumulative participants served and terminated, the number of participants on board at the end of the month, and the actual versus planned accrued expenditures cumulative for the program year to the end of the month. The monthly report period is the calendar month. This report will be submitted to the appropriate RA no later than 20 working days after the end of the report period. The monthly report will be phased out when economic conditions and programmatic consideration no longer warrant its submission.

(h) Specific procedures for meeting these reporting requirements will be furnished to each grantee in the *Forms Preparation Handbook.*

§ 98.9 Quarterly Summary of Participant Characteristics.

(a) The Quarterly Summary of Participant Characteristics (QSPC) contains aggregate characteristics data on all participants in the program. The Summary is to be submitted to the RA with the Program Status Summary and Financial Status Report.

(b) The Summary will include characteristics data aggregated for all participants, as set forth in the report form and will include data on all participants terminated from the program including those entering unsubsidized employment during the reporting period.

(c) For those participants who entered employment during the report period, the Summary will also aggregate the average wage before enrollment and at termination.

(d) A separate report will be required for Title I, Title II and special grants.

(e) Specific reporting procedures and appropriate definitions will be furnished to each grantee in the *Forms Preparation Handbook.*

(f) This report will be submitted by the grantee to the Governor of the State.

§ 98.10 Report of Federal Cash Transactions.

(a) Each grantee shall submit periodically a report of Federal cash transactions. The report will be used to monitor cash advances and to obtain disbursement information. This report will be submitted monthly by each grantee receiving annual grants totalling $1 million or more, and quarterly by other grantees (sec. 713(3)).

(b) Specific reporting procedures will be furnished to each grantee in the *Forms Preparation Handbook.*

§ 98.11 Reallocation of funds.

(a) *General.* The Secretary may reallocate funds from a grantee under the circumstances and in accordance with the procedures described in this section (secs. 103(i) and 702(b)).

(b) *Reallocation based on nonperformance.* (1) Pursuant to section 702(b) of the Act, when the Secretary considers through review of the grantee's reports, monitoring or auditing of the program that its performance may be inadequate or that it may have failed to comply with the Act or regulations, he shall give due notice and opportunity for a public hearing as provided in subpart C.

(2) If the Secretary then decides to reallocate funds based on a ground set forth in paragraph (b)(1) of this section, he shall:

(i) Revoke the grantee's grant for the area, in whole or in part;

(ii) Make no further payments under the Act to the grantee, to the extent which he deems necessary; and

(iii) Notify the grantee of the amount of funds which shall be returned from unexpended funds paid to the grantee during that fiscal year.

(3) The Secretary shall make provision for the reallocation of funds to be used by the State or other alternative prime sponsor to service the area which was served by the prime sponsor before the reallocation, or the Secretary may serve such an area directly. (See § 95.20).

(c) *Reallocation based on need.* (1) In a limited number of circumstances, the Secretary may determine that the unobligated portion of a grantee's Title I grant should be reallocated to another area because the funds are not needed where they were originally allocated. Such reallocations may be made only after the ninth month of the fiscal year for which the grant was made.

(2) Before reallocating funds as set forth in paragraph (c)(1), the Secretary must determine that:

(i) the grantee's plan will be carried out without expending all the funds previously made available for that grant; and

(ii) the excess funds identified under paragraph (c)(2)(i) cannot reasonably be expected to be needed in the following grant period.

(d) *Reallocation.* When the Secretary determines that funds should be reallocated based on the criteria in paragraph (c), he will take the following actions:

(1) *Notice of intent to reallocate funds.* When the Secretary determines that a reallocation is appropriate, he will notify the grantee and the appropriate Governor of the proposed action to remove funds from the grant. The notice shall include the basis for the proposed reallocation.

(2) *Comments by prime sponsor or eligible applicant and the Governor.* The grantee and the Governor will be invited to submit comments on a proposed reallocation of funds out of their area. These comments shall be submitted to the appropriate RA within 30 days of receipt of the notice. The Secretary shall consider these comments before making a final determination to reallocate.

(3) *Notification of final determination.* After reviewing any comments submitted by the grantee or Governor, the Secretary will notify them of his decision. A final decision to reallocate funds of a grantee will be published in the FEDERAL REGISTER and a modification will be made to the grant.

(4) *Reallocation procedures.* In reallocating such funds to supplement other grantee grants, the Secretary shall first consider the need for additional funds by other grantees within the same State. A decision to increase a grantee's grant with reallocated funds will not be made without prior consultation with the grantee as to how the funds will be expended, and prior notification to the Governor. Such a decision will be published in the FEDERAL REGISTER with an announcement of the grantee(s) receiving additional allocations and the amounts.

§ 98.12 Allowable Federal costs.

(a) *General.* Except as modified in these regulations, Federal funds granted under the Act may be expended only for purposes permitted under the provisions of Part 1-15 of Title 41 of the Code of Federal Regulations; 41 CFR 1-15.2 which applies to commercial and nonprofit organizations; 41 CFR 1-15.3 which applies to educational institutions; and 41 CFR 1-15.7 which applies to State and local governments. Allowable costs include both direct and indirect costs. Costs are intended to be directed to increase the employability of participants.

(1) *Direct and indirect costs.* Direct costs are those which can be identified specifically with a particular cost objective such as an organizational unit, function or object, as well as ultimate cost objectives including specific grants, projects, contracts, and other activities. Indirect costs are those costs of a grantee organization which are

not readily identifiable with a particular function or project but nevertheless are necessary to the general operation of the grantee organization and the conduct of the activities it performs. Indirect costs are usually grouped into a common pool and distributed to those activities which benefit from them through the expedient of an indirect cost rate.

(2) *Policies and procedures.* Cost allocation plans including indirect cost rate proposals shall be developed and approved in accordance with the applicable cost principles and procedures set forth in 41 CFR 1-3.7 and 1-15. Whenever costs jointly serve one or more CETA titles and CETA is the only source of funding, a cost allocation plan must be developed to allocate those costs among the titles if these are shared services. These plans are to be used and retained for future audits. Where there are multiple sources of funding, such as other Federal programs or State or local funded programs simultaneously operated by the grantee organization, a cost allocation plan is necessary if there are shared services. This cost allocation plan must equitably allocate costs between the programs (and within the CETA program, among the various titles).

(i) Cost allocation plans of State prime sponsors must be approved in advance by the Department.

(ii) Cost allocation plans of other prime sponsors shall be submitted to the Department for negotiation and approval only when specifically requested to do so. Otherwise, the plans are to be retained for future audits.

(b) *Restriction on use of funds*—(1) *Public service employment programs.* (i) Not less than 85 percent of the funds appropriated pursuant to the Act which are used by an eligible applicant for public service employment programs shall be expended for wages and fringe benefits to persons employed in public service jobs (sec. 203(b)).

(ii) The remaining 15 percent may be used for administration, training, supportive services to public service employment participants; for the acquisition, rental, or leasing of necessary supplies, equipment, and materials, except as limited by paragraph (c) of this section; and for the rental or leasing of real property. An eligible applicant which does not itself administer the entire program may not retain the entire 15 percent for its own use unless this is agreed to by its subgrantees. Unless otherwise agreed to, at least 50 percent of the amount used for the administration of the program shall be available to subgrantees for administrative costs.

(2) No funds granted under the Act may be used, directly or indirectly, as a contribution for the purpose of obtaining Federal funds under any other law of the United States which requires a contribution from the grantee in order to receive such funds, except if authorized under that law. However, the use of funds granted under the Act as a matching contribution in order to obtain additional funds under the Act is not prohibited.

(3) Unless otherwise provided in Parts 94-99, funds provided under one grant under the Act may not be used to support costs of another grant under the Act.

(c) *Expenditures for repairs, maintenance, and capital improvements and for construction; home repair; winterization/weatherization.* (1) Funds for construction, as defined in § 94.4(o), and for repairs, maintenance and capital improvements to existing facilities are allowable only under the following conditions:

(i) To pay wages and fringe benefits for public service employment participants;

(ii) To purchase equipment, materials, and supplies for use by public service employment participants while on the job and for use in the training of public service employment participants, excluding materials which become part of the construction;

(iii) To cover costs of a training program in a construction occupation, including costs such as instructors' salaries, training tools, and books, and allowance and wages; but not including materials which become part of the construction, and only when such construction would not normally be performed by an outside contractor.

(2) Consistent with the maintenance of effort requirements of this subtitle,

the cost of participants salaries and fringe benefits shall be allowable costs when such participants are used in home repair and winterization/weatherization activities where work performed will not inure primarily to the benefit of a profitmaking organization. Home repair and winterization/weatherization activities shall be limited to dwellings of individuals who are at or below 125 percent of the poverty level (as defined in § 94.4) which are privately owned and owner-occupied, privately owned by a nonprofit organization, units of public housing, or privately owned rental housing projects funded and approved by the Federal Energy Administration or the Community Services Administration. (704(f).)

(3) Costs associated with building repairs, maintenance, and capital improvements of existing facilities used primarily for programs under the Act are allowable.

(d) *Allowable cost categories.* Allowable costs shall be reported against the following cost categories: Administration; wages; training; fringe benefits; allowances and services (secs. 208(e), 313(b), 703(12)).

(1) Costs are allocable to a particular cost category to the extent of benefits received by such category.

(2) All grantees are required to plan, control, and report expenditures against the aforementioned cost categories.

(3) All grantees are responsible for assuring that subgrantees and contractors plan, control, and report expenditures against the aforementioned cost categories.

(4) When required by § 98.24 or State Unemployment Insurance Laws to pay unemployment insurance costs, prime sponsors shall plan for those obligations to be incurred during the grant year. This responsibility includes unemployment insurance charges which will be incurred by subgrantees and contractors because of unemployment insurance liabilities incurred under programs under the Act. Unemployment insurance benefit costs are allowable for administrative staff hired in accordance with the administrative provisions of these regulations, and for participants in other than public service employment. Unemployment insurance benefit costs for public service employment participants, including such participants who are also administrative staff, who become eligible for unemployment insurance by reason of their participation in the program shall be paid not from funds under the Act, but from funds appropriated pursuant to Part B, Section 220(a) of Pub. L. 94-444. However, administrative costs associated with the recordkeeping requirements necessary to implement Part B, Section 220(a) of Pub. L. 94-444, shall be allowable as an administrative cost under the Act. Each grantee, subgrantee, or contractor shall cooperate with the SESA's in providing data necessary to implement the provisions of Part B of Pub. L. 94-444.

(e) *Classification of costs by category.* The following principles shall be followed in classifying costs by cost category:

(1) Participants' wages shall be charged to wages.

(2) Participants' fringe benefits shall be charged to fringe benefits (premiums for medical and accident insurance for participants enrolled in classroom training and services to participants is considered to be a training or service cost as appropriate).

(3) Allowances paid to program participants shall be charged to allowances.

(4) Training costs consisting of goods and services which directly and immediately affect program participants shall be charged to training. Such costs should be those incurred for instruction of participants in either a work environment or classroom. Goods and services which have direct and immediate impact on participants are limited to those actually involved in the participant training process itself as opposed to those which are supportive of that process. For examples of training-related costs which may and may not be charged to training see paragraph (f)(4), Training

(5) Supportive and manpower services costs which consist of goods and services which directly and immediately affect program participants shall be charged to Services. Goods and services considered to have direct and immediate impact on participants are

limited to those actually involved in the process of providing participants with supportive and manpower services as opposed to those which are ancillary to that process. For examples of services-related costs which may and may not be charged to Services see paragraph (f)(5), Services.

(6) Administration costs shall consist of all indirect and direct costs associated with the management of the grant. Such costs are those which do not directly and immediately benefit participants but are necessary for effective delivery of direct participant benefits. These costs are generally identified with supervision, and management, fiscal and recordkeeping systems. These costs shall also include the administration costs both direct and indirect of subgrantees and contractors. For examples of administration costs see paragraph (f)(6), Administration.

(7) When contractors bill the grantee with a single unit charged containing costs which are chargeable to more than one cost category the grantee will endeavor to obtain the detail necessary to charge these costs to the proper cost categories. For unit charges such as tuition fees for which the necessary detail cannot be provided, an estimate of the breakdown of the single unit charge among cost categories will be obtained; except when such unit charges are normally billed as a single charge and the cumulate amount of the common charges such as tuition fees and doctors' bills do not exceed $25,000. These exempted charges do not need to be prorated among the benefitting categories but can be charged to the category receiving the most benefit. Any profit (or loss) should be prorated among all the affected cost categories.

(8) Classification of equipment costs present special problems since many items of equipment can be used for various purposes. In the case of multiuse equipment there must be a proration of cost or, if there is a predominant usage relating to one cost category, a charge shall be made to that category.

(9) Any single cost such as staff salaries and/or fringe benefits, which is properly chargeable to more than one cost category shall be prorated among the affected categories.

(f) *Following are examples of cost properly chargeable to each of the cost categories*—(1) *Wages.* All wages paid to participants receiving on-the-job training in public or private nonprofit organizations, and all wages paid to participants in transitional subsidized employment and in work experience will be allowed. Cost of living increases are considered wages. Wages paid to participants while receiving on-the-job training from a private employer organized for profit cannot be supported by funds under the Act (sec. 101(5)).

(2) *Fringe benefits.* Allowable fringe benefit costs for participants include, but are not limited to the following: annual, sick, court and military leave pursuant to an approved leave system; employer's contribution for social security, employees' life and health insurance plans, unemployment insurance where applicable, workers' compensation insurance, and retirement benefits, provided such benefits are granted under an approved plan, and, under public service employment programs, training materials, work tools, uniforms, or other equipment ordinarily provided by the employer to its regular employees, provided these are for the benefit and ownership of the participants. Cost of living increases may not be charged to fringe benefits.

(3) *Allowances.* All allowances paid to program participants pursuant to § 95.34 of this title shall be charged to this cost category.

(4) *Training.* Training costs include, but are not limited to the following: Salaries, fringe benefits, equipment, and supplies of personnel engaged in providing training; books and other teaching aides; equipment and materials used in providing training to participants; classroom space and utilities costs; and that part of tuition and entrance fees which represent instructional costs having a direct and immediate impact on participants (see section 98.12(e)(7) for exceptions). The following are examples of costs not properly chargeable to training: General and administrative costs of the training facility, supervision, clerical support for non-instructors, and training (skill maintenance and upgrading)

of instructors, staff travel except when such travel is an integral part of the instruction, costs of non-classroom space and utilities, transportation of participants to training sites, and costs of processing allowance payments. The compensation of individuals who both instruct and supervise other instructors must be prorated among the Training and Administration cost categories on the basis of time records or other equitable means. Similarly, tuition fees and the costs of supplies used in the course of both participant instruction and other activities should be prorated among the benefitting uses.

(5) *Services.* Services include, but are not limited to services to applicants, supportive and manpower services, as set forth in § 95.33(d)(5).

(i) Services to applicants include outreach and intake.

(ii) Supportive services include child care, health care, medical and dental services, residential support, assistance in securing bonding, transportation, family planning, and legal services.

(iii) Manpower services include orientation, counseling, job development, and job placement, and employability assessment.

(iv) Allowable services costs include, but are not limited to salaries and fringe benefits, space, utility, equipment and travel costs when an integral part of the job, of personnel engaged in providing services to participants; and that part of single unit charges for child care, health care, and other services which represent only the costs of services directly beneficial to participant (see § 98.12(e)(7) for exceptions). Transportation of participants is properly chargeable to services.

(v) The following are examples of costs not properly chargeable to Services: General and administrative costs of the services provided; supervision, clerical support not directly involved in providing services, staff training, travel of supervisory staff, rent and other facilities costs (except as provided for in (iv)), and costs of supplies, materials, and equipment not used directly in providing services to participants.

(6) *Administrative costs.* (i) Administrative costs shall be limited to those necessary to effectively operate the program. They shall not exceed 20 percent of the total planned costs for all program activities other than public service employment unless the Program Narrative Description under § 95.14(b)(2)(i) sets forth an explanation of how all Administration costs have been determined and a detailed documentation to support that amount. The restriction on the use of funds for administration in public service employment programs is set forth in § 98.12(b)(1) (sec. 108(d)(2)).

(ii) Supportive costs are comprised of general and administrative costs, overhead, and similar cost groupings representing the general management and support functions of an organization as well as secondary management and support functions at the bureau or division level. Included are salaries and fringe benefits of personnel engaged in executive, fiscal, personnel, legal, audit, procurement, data processing, communications, maintenance, and similar functions, related materials, supplies, equipment, office space costs, and staff training.

(iii) Direct program costs which are not an integral part of training and services provided participants are comprised of goods and services which neither contribute to the general management and support functions of an organization nor directly and immediately affect participants. Included are direct program salaries and fringe benefits of such administrative positions as supervisors, program analysts, labor market analysts, and project directors. Additionally, all costs of clerical personnel, materials, supplies, equipment, space, utilities, and travel which are identifiable with these direct program administration positions shall be charged to administration. Some examples of administrative costs are the salary of a clerical assistant to a supervisor, that part of an instructor's salary representing time spent supervising other instructors, desk-top supplies used by supervisors and in general office administration, rent, depreciation or maintenance of non-classroom space, staff training, consultants services under contract not involving direct training or services to participants, costs incurred in the establishment and maintenance of State Manpower Services Councils, or prime sponsor's Planning Councils or in publishing a grant application, and costs of monitoring and providing technical assistance to contractors and subgrantees.

(iv) Services normally chargeable to Administration when performed by staff personnel shall be charged to Wages or Fringe Benefits, as appropriate, when performed by program participants.

(g) *Travel costs.* (1) The cost of participant travel and staff travel necessary for the operation or administration of programs under the Act is allowable as provided herein.

(2) Travel costs of the Governor of a State or the chief executive of a political subdivision (and their immediate staff but that do not have continuing programmatic responsibilities), are allowable only if the travel specifically relates to programs under the Act and is approved in advance by the RA. These costs shall be charged to administration.

(3) Travel costs of other governmental officials charged with overall governmental responsibilities are allowable if costs specifically relate to programs under the Act. Prior approval by the RA is not required. These costs shall be charged to administration.

(4) Travel costs for administrative staff, including participants in administrative positions, are allowable when the travel is specifically related to the operation of programs under the Act.

(5) Travel costs, based on mileage, for participants using their personal automobiles in the performance of their jobs are allowable if the employing agency normally reimburses its other employees in this way. These costs shall be charged to fringe benefits.

(6) Travel costs to enable participants to obtain employment or to participate in programs under the Act are allowable as supportive services. Such travel shall be restricted to the grantee's jurisdiction or within daily commuting distance, except:

(i) As provided under § 98.29a(f);

(ii) To pay for transportation costs at the beginning and end of a training course which is more than daily commuting distance but within the State in which the prime sponsor is located;

(iii) As permitted for good cause by the RA, on a case by case basis, within the United States.

§ 98.13 Allocation of allowable costs among program activities.

The program activities against which program costs shall be planned, controlled and reported upon are: Classroom training; on-the-job training; public service employment; work experience; services to participants and other activities. The cost categories under each of these activities are defined in § 98.12(e). The extent to which these cost categories are chargeable to specific program activities is set forth below (sec. 101), except when the option provided under § 95.33(d)(7) is exercised by the grantee. When the option in § 95.33(d)(7) is exercised, wages and fringe benefits may be charged to classroom training and allowances may be charged to on-the-job training, public service employment, or work experience, as appropriate.

(a) *Classroom training.* Cost categories chargeable are: Administration, training, allowances, and services.

(b) *On-the-job training.* Cost categories chargeable are: Wages and fringe benefits (attributable to public or private nonprofit employers only); administration; training; and services.

(c) *Public service employment.* Cost categories chargeable are: Administration, wages, fringe benefits, services and training.

(d) *Work experience.* Cost categories chargeable are: Administration, training, services, wages and fringe benefits.

(e) *Services to participants.* Cost categories chargeable are:

(1) *Allowances.* This includes all allowances paid for short periods of time to participants who are registered for training, but are waiting for startup of a component.

(2) *Services.* This includes all manpower and supportive services including post-placement services which are not part of another program activity and which are provided to participants

by a prime sponsor, eligible applicant, contractor or subgrantee.

(3) *Administration.* This includes all allowable administrative costs directly associated with this activity and a pro rata share of each prime sponsor or eligible applicant's administrative costs under the Act not directly associated with any program activity.

(f) *Other activities.* Costs categories chargeable are: Administration, training, allowances, and services.

§ 98.14 Basic personnel standards for grantees.

(a) Methods of personnel administration will be established and maintained by each prime sponsor and eligible applicant in the public agencies administering the program for employees including participants engaged in the administration of the Act. Such methods shall be in conformity with the Intergovernmental Personnel Act (IPA) Merit Principles, Pub. L. 91-648, Section 2, administered by the U.S. Civil Service Commission. Prime sponsors whose personnel systems have been accepted by the U.S. Civil Service Commission as being in conformity with the Standards for a Merit System of Personnel Administration (45 CFR Part 70), including any amendments thereto, shall be deemed to be in compliance with this section (Sec. 703.14).

(b) Except as provided in paragraph (c) of this section, any prime sponsor or eligible applicant whose personnel system has not been accepted as meeting the requirements of this section shall provide to the RA for approval a plan and steps to be taken for attaining an acceptable system and a reasonable date for completing the plan; and also shall provide a list of those steps it has already taken to provide the merit based personnel system coverage. This plan and description of steps taken shall be submitted to the RA as part of the grant application.

(c) (1) The following are not subject to the requirements of paragraphs (a) and (b) of this section;

(i) Any nongovernmental prime sponsor;

(ii) A consortium administrative unit which is not a unit of government;

(iii) Staff of contractors, subgrantees, title II program agents and employing agencies and titles I, II, and VI program participants; and

(iv) Employees of the prime sponsor's jurisdiction not engaged in the administration of CETA.

(2) A consortium administered by one of the member governments or a unit thereof or a unit of government not a member shall be subject to paragraphs (a) and (b) of this section.

(d) Units whose staff exempt under paragraph (c) of this section shall insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluation, and employee management relations and are encouraged to develop procedures reflective of the principles contained in IPA.

(e) Prime sponsors and eligible applicants should include individuals on their CETA administrative staffs which at all levels are reflective of the composition of the population to be served by the program within its jurisdiction.

§ 98.15 Adjustments in payments.

(a) If any funds are expended by a grantee, subgrantee, or employing agency in violation of the Act, the regulations or grant conditions, the Secretary may make necessary adjustments in payments on account of such expenditures. He may draw back unexpended funds which have been made available in order to assure that they will be used in accordance with the purposes of the Act, or to prevent further unauthorized expenditures, and he may withhold funds otherwise payable under the Act in order to recover any amount expended for unauthorized purposes in the current or immediately preceding fiscal year (secs. 108(b)(2) and 702(b)).

(b) No action taken by the Secretary of Labor under paragraph (a) of this section shall entitle the grantee to reduce program operations, or allowances for any participant or to expend less during the effective period of the contract or Annual Plan than those sums called for in the grant. Any such reduction in expenditures may be deemed sufficient cause for termination (secs. 108(b)(2) and 108(d)).

§ 98.16 Termination of grant; suspension of grant in emergency situations.

(a) If a grantee violates or permits a subgrantee, contractor or an employing agency to violate the regulations, or grant terms or conditions which the Secretary has issued or shall subsequently issue during the period of the Annual Plan, the Secretary may terminate the grant in whole or in part; *Provided, however,* That the grantee may request a hearing under § 98.47 within a 30 day period and that such request will stay the determination pending the outcome of the hearing.

(b) Termination shall be effected by a notice of termination which shall specify the extent of termination and the date upon which such termination becomes effective. Upon receipt of notice of termination, the grantee shall: (1) Discontinue further commitments of grant funds to the extent that they relate to the terminated portion of the grant; (2) promptly cancel all subgrants, agreements, and contracts utilizing funds under this grant to the extent that they relate to the terminated portion of the grant; (3) settle, with the approval of the Secretary, all outstanding claims arising from such termination; (4) submit, within a reasonable period of time after the receipt of the notice of termination, a termination settlement proposal which shall include a final statement of all unreimbursed costs related to the terminated portion of the grant, but in case of terminations under paragraph (a) of this section will not include the cost of preparing a settlement proposal (secs. 108(b)(2), 110(b), and 702(b)).

(c) In emergency situations where the Secretary believes that there has been illegal use of program funds under the Act, and that immediate action is necessary to protect the integrity of the grant program, the Secretary may immediately suspend payments and withdraw unexpended funds as he deems appropriate under the grant and make alternative temporary arrangements to carry out the grant program. In such a situation the Secretary shall notify the grantee of the reasons for his action and set a date for a prompt hearing on the matter, after which the Secretary shall make an appropriate determination.

§ 98.17 Annual Plan settlement procedures.

(a) The settlement of an Annual Plan is the process by which the Department of Labor determines that all applicable administrative actions and all required work of the Annual Plan have been completed by the grantee and the grantor. The following procedures will be complied with during the process of determination:

(b) By a date specified by the RA, each grantee shall submit a TWX containing the following information on each expiring annual plan:

(1) Total fund availability;

(2) Estimated accrued expenditures;

(3) Estimated carryout.

(c) The RA shall issue a notice of fund availability to transfer carryout from the previous Annual Plan. A second notice of fund availability shall be issued by the RA to transfer the carryout from the previous Annual Plan into a new Annual Plan.

(d) By a date specified by the RA, each prime sponsor shall submit:

(1) A final FSR for the previous year's annual plans;

(2) A final Report of Federal Cash Transactions for the previous year's annual plans; and

(3) If applicable, a list of unliquidated liabilities for the previous year's annual plans.

(e) If the final reports are acceptable, the RA's all effect settlement by transferring remaining funds into the current year's annual plans. Final settlement of expired Annual Plans shall not be complete until a final audit has been performed, audit findings have been resolved and final reports have been submitted.

(f) *End of Prime Sponsor Agreement.* The Prime Sponsor Agreement has no end or termination date. However, under the following conditions the Prime Sponsor Agreement shall no longer be in effect:

(1) When all activity under all Annual Plans has been completed and final settlement under those Annual Plans including an inventory settle-

ment under the PSA has been reached.

(2) When the PSA is a multiparty agreement and one or more signatory parties has legally withdrawn from the agreement and an inventory settlement under the PSA has been reached.

(3) When all annual plans have been terminated, as provided in § 98.16, and final settlement under those annual plans, including an inventory settlement under the PSA has been reached.

§ 98.18 Maintenance and retention of records.

(a) Grantees shall maintain records on each applicant. The following types of information shall be recorded:

(1) for each applicant:

Personal identifying and eligibility information;

(2) For each eligible applicant:

Other socio-economic characteristics and work history; and

(3) For each participant:

(i) Program activities in which the individual participated;

(ii) Supportive services received; and

(iii) Status of participant at termination from program.

Specific items, instructions, and definitions are contained in the *Forms Preparation Handbook*.

(b) Pursuant to the provisions set forth in Attachment C of FMC 74-7 the following shall apply with regard to the retention of records pertaining to any grant program under this Act (secs. 703(12) and 713).

(1) Financial records, supporting documents, statistical records and all other pertinent records shall be retained for a period of 3 years. Such financial records related to PSE programs shall be public information. No Federal requirements for records retention which exceed those established by State or local governments shall be otherwise imposed, except that: (sec. 704(d)).

(2) The retention period shall start from the date of submission of the annual or final expenditure report, whichever applies to the particular grant.

(3) The substitution of microfilm copies in lieu of original records may be authorized by the RA upon request of the grantee.

(4) The Secretary will request State and local prime sponsors to transfer grant records to the Department's custody when it is determined that such records have long-term retention value. However, suitable arrangements to avoid duplicate recordkeeping shall be made where the Department and any grantee need such records for joint use.

(5) (i) The names of all participants supported under the Act are considered public information unless otherwise noted in this subtitle. The names, addresses, positions and salaries of all persons employed in public service employment positions under the Act are public information (sec. 704(d)).

(ii) Other information regarding applicants, project participants, or their immediate families, which may be obtained through application forms, interviews, tests, reports from public agencies or counselors or any other source, shall be made available to the public by the grantee to the same degree it makes such information available about its own employees in the governmental jurisdiction. Without the permission of the applicant or participant, such information which is not normally made available to the public on the grantee's own employees in the governmental jurisdiction shall be divulged only as necessary for purposes related to the performance or evaluation of the grant under the Act to persons having responsibilities under the grant, including those furnishing services to the project under subgrant or contract, and to governmental authorities to the extent necessary for the proper administration of law.

(iii) The names of all individuals employed in staff positions under the Act are considered public information. A grantee shall make other information available to the public pertaining to individuals employed in staff positions under the Act in the same manner and to the same extent as such information is made available on its regular employees. A grantee shall make other information available to the public on individuals employed in staff positions by the administrative unit of a consortium, who are not also employed by a member jurisdiction, in accordance with the policy of the member jurisdiction which has the least restrictive policy.

(iv) Irrespective of any other provisions in these regulations, this subparagraph (5) is applicable to participants and staff for programs in Fiscal Year 1975, as well as thereafter.

§ 98.19 Program income.

(a) The State and any agency or instrumentality of a State which is a grantee shall not be held accountable for interest earned on grant-in-aid funds pending their disbursement for program purposes under the Act (FMC 74-7).

(b) Units of local government shall be required to return to the Federal Government interest earned on advances of grant-in-aid funds in accordance with a decision of the Comptroller General of the United States (42 Comp. Gen. 289). Interest income shall be returned to the RA within 30 days after the end of each grant quarter.

(c) Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with the MA Property Handbook which implements Attachment N of FMC 74-7.

(d) Royalties received from copyrights and patents during the grant period shall be retained by the grantee and be added to the funds already committed to the program. After termination or completion of the grant, the Federal share of royalties in excess of $200 received annually shall be returned to the Secretary (FMC-74-7).

(e) All other program income earned during the grant period shall be retained by the grantee and, in accordance with the grant agreement, shall be added to funds committed to the project and be used to further eligible program objectives (FMC 74-7). Expenditures of program income shall be subject to the provisions of this part. Further, program income shall be expended according to the provisions of the Title of the Act under which the income was generated.

(f) The prime sponsor shall record the receipt and expenditure of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of grant project transactions.

§ 98.20 Procurement and property management standards.

(a) *Procurement standards.* (1) Subgrant means an agreement between the grantee and units of State or local government, public agencies or private nonprofit organizations whereby the grantee provides funds or aid in-kind to carry out specific programs, services, or activities authorized under the Act and the prime sponsor's grant. (See § 98.27(b).)

(2) Contract means a legally binding agreement between the grantee and any party, public or private for the provision of specific services authorized under the prime sponsor's grant and the Act wherein the grantee agrees to pay therefor. (See § 98.27(a).)

(3) The standards to be used for the procurement of supplies, equipment, and other materials and services with Federal grant funds are those described in Attachment O of FMC 74-7 with the following exceptions. On-the-job training contracts are not subject to the sole source approval requirement under paragraph 6(b) of Attachment O and selection of subgrantees is exempt from the requirements of Attachment O. When on-the-job training contracts are made under this exception a record of the name of the contractor, the amount and the services to be provided must be made available to the RA upon request. These standards are furnished to assure that such materials and services are obtained in compliance with the provisions of applicable Federal laws and Executive Orders.

(4) Where applicable, State and local laws which are more restrictive than the provisions of this paragraph shall apply.

(b) *Property management standards.* (1) All prime sponsors shall comply with the provisions of FMC 74-7 Attachment N as implemented by the MA Property Handbook.

(2) Prime sponsors shall obtain prior approval from the RA for all purchases of nonexpendable personal property having an acquisition cost of $1,000 or more and a life of more than one year. Approval may be requested by itemizing such purchases in the grant application.

§ 98.21 Nondiscrimination and Equal Employment Opportunities.

(a) Nondiscrimination generally. Every grant made under the Act shall contain an assurance concerning the provision of equal employment opportunity under the grant.

(b) (1) No person shall on the ground of race, creed, color, handicap (as defined in paragraph (h)) of this section; national origin, sex, age, as provided in subparagraph (2) of this paragraph, political affiliation, or beliefs be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under the Act (Sections 703(1), 712, and Vocational Rehabilitation Act, Section 504).

(2) The prohibition against age discrimination shall not be interpreted to prohibit establishment of training and employment programs under the Act designed to serve the legitimate needs of specific age groups. The prohibition against age discrimination shall not be interpreted to prohibit establishment of bona fide qualifications for participation in any program under the Act.

(c) When the Secretary determines that a grantee has failed to comply with the requirements of paragraph (b) of this seciton, he shall notify the grantee of the noncompliance and request the grantee to secure compliance. If within a reasonable time, not to exceed 60 days, the grantee fails or refuses to secure compliance, the Secretary may, subject to the hearing requirements of this Part 98, terminate financial assistance under the Act and:

(1) May refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) May exercise the powers and function provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 (d)); and

(3) May take other actions as may be provided by law.

(d) When a matter under this section is referred to the Attorney General, or when the Attorney General believes that a pattern or practice of discrimination exists, the Attorney General may bring a civil action in any appropriate United States District Court, including injunctive relief.

(e) The Secretary shall enforce the provisions of paragraph (b) of this section with regard to discrimination on the basis of sex in accordance with Section 602 of the Civil Rights Act of 1964. Section 603 of such Act shall apply with respect to any action taken by the Secretary to enforce these provisions.

(f) This section shall not be construed as affecting any other legal remedy that a person may have if that person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any program or activity receiving assistance under the Act.

(g) The grantee shall be responsible for assuring that no discrimination prohibited by this section occurs in any program for which it has responsibility, and shall establish an effective mechanism for this purpose which is described in its plan. The grantee may, as one recommended means of establishing this mechanism, assign the responsibility for administering the Equal Employment Opportunity (EEO) program to one individual and require subgrantees and contractors to prepare affirmative action plans. In such cases, the grantee may include in its Comprehensive Manpower Plan a description of its EEO program and the related affirmative action plans of its subgrantees and contractors, including the procedures established for monitoring these activities.

(h) The term "handicapped individual" means any individual who (1) has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment, and (2) can reasonably be expected to benefit in terms of employability from an activity under the Act.

§ 98.22 Nepotism.

(a) *Restriction.* No grantee, subgrantee, contractor, or employing agency may hire a person in an administrative capacity, staff position or public service employment position funded under the Act if a member of his or her immediate family is engaged in an administrative capacity for the same grantee or its subgrantees, contractors, or employing agencies. Where a State or local statute regarding nepotism exists which is more restrictive than this policy, the eligible applicant should follow the State or local statute in lieu of this policy.

(b) *Definitions.* For purposes of this section: (1) The term "member of the immediate family" includes: wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, and stepchild.

(2) The term "staff position" includes all CETA staff positions funded under the Act, such as instructors, counselors, and other staff involved in administrative, training on services activities.

(3) The term "Person in an administrative capacity" includes: Those persons who have overall administrative responsibility for a program, including all elected and appointed officials who have any responsibility for the obtaining of and/or approval of any grant funded under the Act, such as members of the prime sponsor planning council, as well as other officials who have any influence or control over the administration of the program, such as the project director, deputy director and unit chiefs; and persons who have selection, hiring, placement or supervisory responsibilities for public service employment participants.

§ 98.23 Special limitations on participant activities.

(a) *Political activities.* (1) (i) No program under the Act may involve political activities. (ii) Neither, the program nor the funds provided therefor, nor the personnel employed in the administration of the program, shall be in any way or to any extent, engaged in the conduct of political activities in contravention of Chapter 15 of Title 5, United States Code (secs. 208(g) and 710).

(2) Participants employed by State and local government in the administration of the program and participants whose principal employment is in connection with an activity financed by other Federal grants or loans are covered by the Hatch Act (secs. 208(g) and 710).

(3) Participants may not be employed or outstationed in the offices of a Member of Congress or a State or local legislators.

(4) Participants may not be employed or outstationed in positions involving political activities in the offices of other elected officials such as mayors, county executives or Governors. However, since under the responsibility of such elected officials are non-political activities, placement of participants in such positions is permissible.

(b) *Political patronage.* No program will be funded if the eligible applicant discriminates with respect to political affiliation. Specifically, no eligible applicant, subgrantee or employing agency may select, reject, or promote a participant based on that individual's political affiliation or beliefs. The selection or advancement of employees as a reward for political services or as a form of political patronage, whether or not the political service or patronage is partisan in nature, is discrimination based on political belief or affiliation, and is prohibited (sec. 208(f)).

(c) *Lobbying activities.* No funds made available under this Act may be used for lobbying activities as prohibited in 18 USCA 1913.

(d) *Sectarian activities.* No participant in any program under the Act may be employed in the construction, operation, or maintenance of such part of any facility as is used or will be used for sectarian instruction or as a place of religious worship (sec. 208(h)).

(e) *Labor disputes.* No participant may be placed into or remain working in any position which is affected by a labor dispute. If a labor dispute occurs during the grant period, participants in affected positions must either be relocated to positions not affected by the dispute, or be suspended through administrative leave or other means. However, participants belonging to labor unions involved in the dispute shall be treated in the same manner as any other person who is a member of the union. Every effort should be made to relocate participants who wish to remain working, and who are non-union members, into suitable public service positions unaffected by the labor dispute (secs. 208(a)(1) 103(7)).

§ 98.24 General benefits and working conditions for program participants.

(a) (1) Each participant in an on-the-job training, work experience or public service employment program under the Act shall be assured of workers' compensation at the same level and to the same extent as other employees of the employer who are covered by a State or industry workers' compensation statute. Whether provided through the State's compensation agency or a private insurance carrier, this coverage includes medical and accident insurance as well as income maintenance insurance.

(2) Where a participant is employed or engaged in any CETA program activity, i.e., work experience, public service employment, on-the-job training, classroom training, services to participants and other activities where others similarly employed or engaged are not covered by an applicable workers' compensation statute, the participant shall be provided with medical and accident insurance coverage. Whether provided through the State's workers' compensation agency or a private insurance carrier, the prime sponsor shall provide such participants with medical and accident insurance coverage comparable to the medical and accident insurance provided under the applicable State workers' compensation statute. However, prime sponsors shall not be required to provide these participants with the income maintenance insurance coverage in the statute.

(b) Each participant in an on-the-job training, work experience, or public service employment program shall also be assured of health insurance, unemployment insurance (to the extent such benefits are allowable), coverage under collective bargaining agreements and other benefits at the same levels and to the same extent as other employees similarly employed, and to working conditions and promotional opportunities neither more nor less favorable than such other employees similarly employed (secs. 208(a)(4), 703(5) and 703(6)). Nothing in this section shall be interpreted to require coverage for health insurance, unemployment insurance and similar benefits for participants, such as, work experience participants, where there is no employee of the employer performing the same or similar work in the employment situation. In determining whether the work is the same or similar to that of a person regularly employed, the prime sponsor will take into consideration, but shall not be limited to, employment status, type of work performed, job classification and method of appointment to the position.

(c) Every participant must be advised prior to entering upon employment of the name of his employer, and of his rights and benefits in connection with his employment (sec. 208(a)(8)).

(d) No participant will be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health or safety. In the case of participants employed or trained for jobs inherently dangerous, e.g., fire or police jobs, particpants will be assigned to work in accordance with reasonable safety practices. The provisions of section 2(a)(3) of Public Law 89-286 (relating to health and safety conditions) shall apply to such programs or activity (secs. 208(a)(5) and 703(5)).

§ 98.25 Retirement programs.

(a) The Act provides for temporary training and employment. Therefore, the inclusion of CETA participants in a retirement system is not encouraged. Funds under the Act, however, may be paid into a retirement system on behalf of participants in on-the-job training, work experience and public service employment in public or private non-profit agencies who:

(1) Obtain unsubsidized employment with the employer, provided the time spent as a CETA participant is accredited service under the employer's retirement plan;

(2) Obtain unsubsidized employment with another employer provided benefits are portable; or

(3) Obtain vesting.

(b) Examples of methods of administering such retirement system accounts are as follows:

(1) Payments are made first into a reserve account and are not paid into the retirement fund until the participant obtains a status described in paragraphs (a) (1) through (3) of this section. The amount held in the reserve account is then adjusted quarterly to reflect the turnover of participants and the projected funds needed to cover current participants; or

(2) Payments are made first into a reserve account for the actuarily determined number of participants who can be expected to obtain a status described in paragraphs (a) (1) through (3) of this section, and the payments are not paid into the retirement fund until the participants obtain that status. If this method is used, the amount held in the reserve account and the actuarial rate shall be adjusted or determined at least annually; or

(3) Payments are made directly into the retirement fund for the actuarily determined number of participants who can be expected to obtain a status described in paragraphs (a) (1) through (3) of this section. The amount held in the fund shall be adjusted or redetermined at least quarterly to reflect the actual number of participants who have acquired a status described in paragraph (a) (1) through (3) of this section. If this method is used, the amount of accumulated principal and interest earned on contributions made on behalf of participants not described in paragraphs (a) (1) through (3) of this section who terminate their program participation or who, for whatever reason, are no longer considered members in the retirement program must be retrievable.

(c) (1) If other than an actuarial method of benefit determination is used, there shall be at least a quarterly reprogramming back into the CETA program of any contributions (principal and interest) made on behalf of participants not described in paragraphs (a) (1) through (3) of this section who terminate their program participation, or who, for whatever reason, are no longer considered members in the retirement program.

(2) If an actuarial method is used in determining the number of participants who will benefit, a redetermination of the actuarial rate shall be made at least annually.

(3) Funds set aside in a reserve account may earn interest. Any interest earned shall be retained in the reserve account and shall be taken into consideration during reprogramming. Any interest earned on what may reasonably be determined to be a participant's portion of the reserve fund account may also be paid into the retirement fund when the participant obtains a status described in paragraphs (a) (1) through (3) of this section.

(d)(1) Effective October 1, 1977, costs for retirement programs will be allowed only under an approved plan that meets the requirements of paragraph (a) of this section.

(2) The Regional Administrator, with the approval of the Regional Solicitor, may allow a prime sponsor or eligible applicant which is in a State whose law prohibits the implementation of procedures required by this section, an extension of not more than one calendar year from October 1, 1977, or up to the end of the next regular session of the State legislature, whichever occurs later. Such an extension may be granted only upon a showing by a legally supported opinion of the State attorney general that the State legislature must change or modify a particular State law or laws so that the prime sponsor or eligible applicant may comply with this section in its use of CETA funds and that the procedures of this section may not be legally implemented by order of the Governor or by other executive authority. An extension may only be given on a statewide basis and will be applicable to all prime sponsors and

eligible applicants within the State, which are covered by the affected State laws.

(e) Expenditures may be made from program funds for taxes under the Federal Insurance Contributions Act (FICA), 26 U.S.C. 3101 et seq.

(Sec. 702(a) of the Comprehensive Employment and Training Act, as amended, 29 U.S.C. 982(a))

[42 FR 55760, Oct. 18, 1977, as amended at 43 FR 34462, Aug. 4, 1978]

§ 98.26 Procedures for resolving issues between grantees and complainants.

(a) Each prime sponsor or eligible applicant shall establish a procedure for resolving any issue arising between it (including any subgrantee or subcontractor of the prime sponsor) and a participant under any Title of the Act. Such procedures shall include an opportunity for an informal hearing, and a prompt determination of any issue which has not been resolved. When the prime sponsor or eligible applicant takes an adverse action against a participant, such procedures shall also include a written notice setting forth the grounds for the adverse action and give the participant an opportunity to respond.

(b) Each prime sponsor or eligible applicant shall establish informal review procedures including an opportunity for an informal hearing to deal with issues arising between it and any of its subgrantees or contractors.

(c) Each prime sponsor or eligible applicant should establish informal review procedures such as informal hearings or some other process, to deal with issues arising between it and any aggrieved party.

(d) Final determinations made as a result of the review process shall be provided to the complainant in writing. Such notice shall include the procedures by which the complainant may appeal the final determination, set forth in Subpart C of this part. No individual or organization subject to the issue resolution requirements of this section may initiate the hearing procedures of subpart C of this part until all remedies under this section have been exhausted.

§ 98.27 Grantee contracts and subgrants.

(a) Contracts may be entered into between a grantee and any party, public or private, for purposes set forth in a grant agreement except as indicated in paragraph (c) of this section. Procurement standards shall be those set forth in § 98.20.

(b) Subgrants may be entered into only between the grantee and units of State and local general government, public agencies and nonprofit organizations.

(c) Contracts or subgrants which propose to expend Federal funds for a public service employment program may be entered into only with other public agencies or with private nonprofit agencies, except for the provision of administrative services (e.g., auditing, payroll, staff training) which may be entered into with private profitmaking organizations. These services shall not include direct public service employment program services such as the employment of participants.

(d) Grantee responsibility for development, approval and operation of contracts and subgrants. (1) The grantee is responsible for development, approval and operation of all contracts and subgrants and shall require that its contractors and subgrantees adhere to the requirements of the Act, regulations promulgated under the Act, and other applicable law.

(2) It shall require contractors and subgrantees to maintain effective control and accountability over all funds, property and other assets covered by the contract or subgrant.

(3) The grantee shall assure that contractors and subgrantees shall maintain and make available for review by the grantee and the Department of Labor all records pertaining to the operations of programs under such contracts and subgrants, consistent with the maintenance and retention of records requirements of § 98.18 (secs. 105(a)(1)(B) and 208(d)).

(e) *Cancellation.* If a contractor or subgrantee does not comply with any requirement of the Act, the regulations promulgated under the Act, and other applicable law, the grantee shall, as appropriate, cancel the contract or subgrant in whole or in part. The grantee may cancel for noncompliance with additional conditions established by the grantee for the contract or subgrant

(f) *Continuity of service when contract or subgrant is canceled.* If a contract or subgrant is canceled, in whole or in part, the grantee shall develop procedures for assuring continuity of service to participants and provide adequate notice to affected staff of the change (secs. 105(a)(1)(B) and 208(d)).

(g) *Contracts and subgrants extending beyond the term of the Annual Plan.* The nature of certain training programs may make it necessary for contracts or subgrants to be entered into by the grantee which will extend beyond the term of the Annual Plan under the Act. The grantee is authorized to enter into contracts or subgrants which extend past the termination date of the Annual Plan but such extension shall not exceed 1 year and shall be subject to the provisions of § 98.15 and § 98.16. In such cases, the grantee shall continue to be responsible for the administration of such contracts and subgrants.

§ 98.28 Non-Federal status of participants.

Except where specifically provided to the contrary, participants in a program under the Act shall not be deemed Federal employees and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employment benefits.

§ 98.29 Applicability of Davis-Bacon wage rates to projects under the Act.

(a) All laborers and mechanics employed by contractors or subcontractors in any construction, alteration, or repair, including painting and decorating of projects, buildings, and works which are federally assisted under this Act, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5) in accordance with the following:

(1) Such rates shall be paid such laborers and mechanics who are employed by contractors or subcontractors, and who are not participants or regular employees of the grantee and who are employed in connection with covered employment related to a facility or building which is used primarily for programs under the Act.

(2) Such rates shall be paid all such laborers and mechanics including participants who are employed by contractors or subcontractors on such construction projects which are assisted in whole or in part with funds under the Davis-Bacon Act and other statutes, other than CETA, which provide for the payment of Davis-Bacon Act determined wages to laborers and mechanics engaged in such employment.

(3) Such rates shall be paid all such laborers and mechanics including participants who are employed on projects in areas of excessively high unemployment wherein the eligible applicant has certified that the application of the provisions of Section 604 of the Act is necessary and wherein the projects are assisted in whole or in part with Title VI funds (604(b)(3), 706).

(b) The application of the provisions of this section shall be in accordance with the provisions and procedures of 29 CFR Parts 1 and 5.

§ 98.29a Job Corps training opportunities for CETA grantees.

(a) Grantees under Titles I, II, III, and VI of the Act, including contractors under § 303 of the Act, may purchase services and training authorized under their titles of the Act from a Job Corps center; such a transaction shall be called a buy-in.

(b) In participating in the buy-in program, grantees shall make expenditures in accordance with the regulations under their appropriate titles of the Act except as otherwise permitted by paragraph (f) of this section. In participating in the buy-in program, Job Corps shall make expenditures in accordance with the provisions of Part 97a of this subtitle.

(c) A buy-in plan shall be established by a negotiated agreement between a grantee and a center operator. Prior to execution of the agreement by the Job Corps center operator, the center operator must obtain the written approval of the appropriate ETA office.

(d) Two types of buy-in plans may be negotiated:

(1) *Job Corps enrollees (residential and nonresidential).* Participants who meet the eligibility criteria for Job Corps under Title IV of the Act, as well as the eligibility criteria of the grantee's title of the Act, may be fully enrolled in Job Corps as residents or nonresidents. Such enrollees shall be treated as and receive the same services, protections, allowances, etc., as regular corpsmembers except as otherwise provided in paragraph (f) of this section.

(2) *Trainees (nonresidential).* Participants ("trainees") who are not eligible for, or who do not want or require residential services must meet the eligibility criteria of the grantee's title of the Act only, and may receive training from the Job Corps center operator under the following options:

(i) *Vocational trainees.* These will be trained in the requisite entry-level skills for the vocation designated in the buy-in agreement.

(ii) *Basic Education and GED trainees.* These will be individually assessed for reading, arithmetic, job-seeking skills and general education development and trained to meet entry-level requirements for specified job clusters and/or a GED certificate, as appropriate.

(iii) *Combined Basic Education-Vocational trainees.* These will receive both specified vocation and education training.

(iv) Other options include:

(A) Grantee use of center facilities, including nights or weekends.

(B) Grantee use of centers for training youths during the summer with charges to the grantee based on the pro rata hourly costs.

(e) Allocation of funds. Slots available for purchase by grantees shall be over and above the current budgeted center capacity. Funds received by the Job Corps center contract or program operating plan.

(f) Prime Sponsor responsibility. In addition to paying for training at Job Corps centers, grantees shall be responsible for spending funds received under their own titles of the Act to recruit enrollees and trainees, provide them with support services prior to their arrival at centers and following the completion of training, provide their transportation to and from the center, and provide job placement assistance. Grantees shall also supply associated administrative services in accordance with the regulations under this part as agreed upon with the center. In addition, grantees are authorized to pay any transportation costs for buy-in enrollees and trainees in excess of that allowed by § 98.12(g)(6).

(g) The terms of a buy-in agreement involving trainees shall state the amount and system of payment, and shall include provisions that:

(1) Pay and allowances for trainees shall be borne by the grantee and paid in accordance with regulations under the grantee's title of the Act;

(2) The center will assure that its liability insurance covers the trainees;

(3) Trainees shall be covered by the workers' compensation required by the regulations under the grantee's title of the Act;

(4) As appropriate, the center shall provide trainees with first aid, emergency health care, and initial outpatient visits. First aid and emergency health care shall mean care provided by professionals or lay persons to prevent death or aggravation of serious illnesses or injury, including ambulance service. Initial outpatient visits shall mean single visits to the dispensary or sick call for the purpose of the initial evaluation of an acute health condition. Treatment will be limited to that which can be given by the center staff at the time of the visit. Any additional evaluation, diagnosis or treatment must be obtained through other arrangements by the prime sponsor or the trainee; and

(5) Every trainee under the age of majority shall furnish a statement from a parent or legal guardian agreeing to permit Job Corps to provide the health care set forth in the agreement. Trainees who are over the age of majority shall themselves sign a similar statement.

(h) Accounting. For buy-ins involving trainees, the center shall maintain separate accounts for funds received under each title of the Act. Contract centers shall report all buy-in funds received on the Job Corps Form MA 2-111, Center Financial Status Report, and on Form MA 2-223A, Center Financial Report under "Other Income (identify separately by source)." CCC's shall report funds on Form MA 2-223B, Center Financial Report. Grantees shall account for funds expended in support of a Job Corps buy-in in accordance with current CETA procedures and cost categories.

(i) Reporting credits. Grantees participating in the buy-in plan will receive credit for the recruiting, training, placement, and support services provided trainees and enrollees and will report activity under the buy-in agreement in accordance with current CETA procedures on reporting and accountability provided in this part. The Job Corps centers will provide the data required by the grantee data system to allow the reports for credit to be completed. The Job Corps center will report on total center population as currently required and will, thus, receive credit for serving enrollees and trainees.

Subpart B—Assessment and Evaluation

§ 98.30 General.

(a) This Subpart B sets forth the assessment and evaluation responsibilities of the grantee (§ 98.31) and the Secretary of Labor (§ 98.32). The grantee shall, as part of its general responsibility to carry out the purposes and provisions of the Act, establish adequate program management for the purposes of examining, in a systematic fashion, the performance of its program in meeting the goals and objectives contained in the Annual Plan and measuring the effectiveness and impact of its program in resolving manpower problems identified in that Annual Plan (secs. 105(a)(1)(B) and 703(14)).

(b) The Secretary shall assess grantees to determine whether they are carrying out the purposes and provisions of the Act in accordance with their approved plans. The Secretary shall also evaluate the overall programs and activities conducted under the Act to aid in the overall administration of the Act (secs. 311 (c), (d) and 313(b)).

§ 98.31 Responsibilities of the prime sponsor or eligible applicant.

(a) As prescribed under Subpart A of this Part 98, the grantee shall submit periodic reports on the performance of its program in relation to its plan as required by the Secretary (secs. 313(b) and 703(12)). The grantee shall implement and maintain the necessary recordkeeping required to complete these periodic reports. While such recordkeeping will support reports to the Secretary, it is principally for the use of the grantee to provide basic internal management information.

(b) The grantee is required to establish internal program management procedures (sec. 703(14)). Such procedures shall be used by the grantee in the monitoring of day-to-day operations, to periodically review the performance of the program in relation to program goals and objectives, and to measure the effectiveness and impact of program results in terms of participants, program activities, and the community. The objective of such procedures shall be the improvement of overall program management and effectiveness.

(c) The grantee shall monitor all activities for which it has been provided funds under the Act to determine whether the assurances and certifications made in its grant application and the purposes and provisions of the Act are being met, and to identify problems which may require the grantee to take corrective action in order to assure such compliance. The grantee shall fulfill this monitoring function through the use of internal evaluative procedures, the examination of program data, or through such special analysis or checking as it deems necessary and appropriate (secs. 105 (a) and (b), 108(d), and 703).

(d) The grantee shall cooperate with the Secretary's evaluation and assessments by providing special reports on program activities and operations as requested; the findings of evaluations of effectiveness and impact; and access to its records and program operations.

(e) When the grantee finds that operations do not equal planned performance, it shall develop and implement appropriate corrective action.

§ 98.32 Responsibilities of the Secretary.

(a) As used in this section, the term "assessment" refers to the Federal review of grant application and performance of individual grantees, and the term "evaluation" refers to the Federal study of the overall effectiveness and impact of programs and activities under the Act.

(b) The Secretary has the responsibility to determine that the grantee is operating in general accordance with its approved grant application in carrying out the purposes and provisions of the Act, and has demonstrated maximum efforts to implement the provisions in its prior year's Annual Plan.

(1) The Secretary shall assess the grantee's program and activities in order to determine compliance with assurances and certifications of its grant, compliance with the purposes and provisions of the Act, compliance with the regulations promulgated under the Act and performance in the achievement of goals and objectives specified in the approved plan (secs. 105, 108(d), and 703).

(2) Such assessment shall be conducted through the review of required periodic reports and shall be supplemented by special reports from the grantee, the examination of records maintained by the prime sponsor or eligible applicant, selective on-site reviews including in certain instances, reviews of contractors and subgrantees after prior consultation with the grantee, the investigation of allegations or complaints, or other examination as deemed necessary and appropriate by the Secretary (secs. 311 (c), (d), 313 (a), (b), 703(12), and 108).

(3) Assessment may also be conducted for purposes of the offering of technical assistance and/or recommendations for corrective actions to grantees as considered necessary. Such assessments will be made in consultation with grantees.

(c) The Secretary has the responsibility to provide for the continuing evaluation of all programs and activities conducted pursuant to the Act. Such studies shall include examination of:

(1) Cost in relation to effectiveness;

(2) Impact on communities and participants;

(3) Implication for related programs;

(4) Extent to which needs of various age groups are met;

(5) Adequacy of mechanisms for the delivery of services;

(6) Comparative effectiveness of grantee programs with similar programs conducted by the Secretary under Section 110 or Title III;

(7) Opinions of participants about the strengths and weaknesses of the programs;

(8) Relative and comparative effectiveness of programs under this Act and Part C of Title IV of the Social Security Act (Work Incentive Program for Welfare recipients) (sec. 313 (a) and (b));

(9) The effectiveness of programs in meeting the employment needs of disadvantaged, unemployed, and underemployed persons; and

(10) The extent to which artificial barriers restricting employment and advancement opportunities in agencies receiving funds under the Act have been removed.

(d) The Secretary shall compile, on a State, regional and national basis, information obtained from periodic reports or special reports, surveys, or samples required from grantees, including information on:

(1) Enrollee characteristics, including age, sex, race, health, education level, and previous work and employment experience;

(2) Duration in training and employment situations, including information on the duration of program participation, for at least a year following the termination of participation in federally assisted programs and comparable information on other employees or trainees or participating employers; and

(3) Total dollar cost per trainee, including breakdown between salary or allowance, training and supportive

services, and administrative costs (sec. 313(b)).

(e) Evaluations carried out in accordance with paragraph (d) of this section may be conducted directly by Department of Labor staff or through contract, grant or other arrangement, as the Secretary deems necessary or appropriate (sec. 311(c)).

§ 98.33 Limitation.

No prime sponsor or eligible applicant nor the Secretary shall, in arranging for evaluation of any program under the Act, utilize for such evaluation any non-governmental individual, institution, or organization which is associated with that program as a consultant, technical advisor or in any similar capacity (sec. 704(c)).

§ 98.34 Consultation with the Secretary of Health, Education, and Welfare.

The Secretary shall consult with the Secretary of Health, Education, and Welfare with respect to arrangements for services of a health, education, or welfare character in plans under this Act. This consultation shall focus on the relationship of such services to be delivered under this Act with those being delivered under other applicable laws for which the Secretary of Health, Education, and Welfare is responsible. The RA will provide copies of Title I and II grant applications to the Regional Director of Health, Education, and Welfare for review and comment on proposed activities of a health, education, and welfare character as provided for in the Memorandum of Agreement signed June 3, 1974, and July 25, 1974, by the Secretary of Labor and the Secretary of Health, Education, and Welfare, respectively.

Subpart C—Hearings and Judicial Review

§ 98.40 Purpose and policy.

(a) The regulations set forth in this Subpart C contain the procedures established by the Secretary for carrying out his responsibilities under the Act for the review of comprehensive manpower plans and applications for financial assistance, and for the receipt, investigation, hearing and determination of questions of noncompliance with the requirements of the Act and the regulations promulgated under the authority of the Act (sec. 108).

(b) It is the policy of the Secretary to receive information concerning alleged violations of any title of the Act and the regulations promulgated pursuant thereto from any person, or any unit of Federal, State or local government. Assistance in the filing of a formal allegation may be secured from the appropriate Regional Solicitor, by any person who desires and needs such assistance.

(c) A participant in a program under the Act must exhaust the administrative remedies established by the prime sponsor or eligible applicant for resolving matters in dispute prior to utilizing the procedures under this Subpart C. The filing of such a complaint shall not, however, automatically act as a stay of the decision rendered by the prime sponsor or eligible applicant. A participant may initiate an action under this subpart within 30 days of any final decision by a grantee.

§ 98.41 Review of plans and applications; violations.

(a) The Secretary shall not finally disapprove any Comprehensive Manpower Plan or application for financial assistance submitted under any title of the Act (except where other procedures are set forth e.g., § 97/292), or any modifications, or amendments thereof, without first affording the grantee submitting the plan or application reasonable notice and opportunity for a hearing as provided in § 98.47 et seq.

(b) When information available to the Secretary indicates that a grantee may be:

(1) Maintaining a pattern or practice of discrimination in violation of Section 703(1) or Section 712(a) of the Act or otherwise failing to serve equitably the economically disadvantaged unemployed, or underemployed persons in the area it serves;

(2) Incurring unreasonable administrative costs in the conduct of activi-

ties and program, as determined pursuant to regulation;

(3) Failing to give due consideration to continued funding of programs of locally demonstrated effectiveness including those previously conducted under provisions of law repealed by Section 714 of the Act; or

(4) Otherwise materially failing to carry out the purposes and provisions of the Act or regulations issued pursuant to the Act; he shall, before taking final action on such grounds, notify the grantee of his proposed action and provide the grantee a reasonable time within which to respond. All further proceedings shall be conducted as provided in § 98.46 and § 98.47 et seq.

(c) Every other person claiming legal injury because of any action under the Act may be heard only by initiating a complaint under § 98.42.

§ 98.42 Complaints; filing of formal allegations; dismissal.

(a) Every complaint by any complainant, whether in writing or not, shall be filed as a formal allegation before the commencement of any investigation or corrective action is required under this part.

(b) All formal allegations shall be filed with the appropriate RA. A formal allegation so filed may be withdrawn only with the consent of the Secretary.

(c) A formal allegation pending more than 6 months after filing because the complainant has failed to cooperate or make himself available during investigation of the matter may be dismissed by the RA upon notice to the last known address of the complainant.

§ 98.43 Form.

Every formal allegation shall be in writing and signed by the complainant, and shall be sworn to before a Notary Public, or other duly authorized person. A formal allegation need not be in any particular form, but should be neat, legible and suitable for flat filing.

§ 98.44 Contents of formal allegations; amendment.

(a) The formal allegation should contain the following:

(1) The full name and address of the person making the charge.

(2) The full name and address of the party against whom the formal allegation is made (hereinafter referred to as the respondent(s)).

(3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful practice.

(4) Where known, the provisions of the Act, regulations, grant, and application of the grantee believed to have been violated.

(5) A statement disclosing whether proceedings involving the Act complained of have been commenced before a State or local authority, and, if so, the date of such commencement and the name of the authority.

(6) A statement that the administrative procedures established by the grantee have been, if applicable, followed to completion by the complainant.

(b) Notwithstanding the provisions of paragraph (a) of this section, a formal allegation will be considered to have been filed when the RA receives from the complainant a written statement sufficiently precise to both identify those against whom the allegations are made, and to fairly afford the respondent an opportunity to prepare a defense. A formal allegation may be amended to cure technical defects or omissions, including failure to swear to the allegation, or to clarify and amplify allegations made therein, and such amendments relate back to the original filing date. An amendment alleging additional acts not directly related to or growing out of the subject matter of the original formal allegation will be permitted only where at the date of the amendment the allegation could not have been timely filed as a separate formal allegation and the rights of any respondent will not be prejudiced.

§ 98.45 Investigations.

(a) The RA will make a prompt investigation of each formal allegation filed as provided in this part. The investigation may include, where appropriate, a review of pertinent practices and policies of any grantee, the circumstances under which the possible noncompliance with the Act or regulations issued thereunder occurred, and other factors relevant to a determination as to whether the respondent has failed to comply with requirements of the Act, the regulations, and the grant.

(1) If an investigation pursuant to paragraph (a) of this section indicates to the RA a failure to comply with the Act, the regulations, or the grant, the RA will so inform the respondent and the complainant and the matter, will if possible, be resolved by informal means. If informal resolution does not occur within a reasonable period of time, action will be taken as provided in this part or as otherwise provided by law.

(2) If an investigation does not warrant action pursuant to subparagraph (a)(1) of this section, the RA will so inform the respondent and the complainant in writing.

(b) No grantee, participant, respondent or other persons shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the Act, the regulations, the grant, or the application of an eligible applicant because he has made a complaint, formal allegation, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of every complainant shall be kept confidential except to the extent necessary to carry out the purpose of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 98.46 Opportunity for hearings; when required.

An opportunity for a public hearing shall be extended in each of the following instances:

(a) When the RA receives a formal allegation from an affected unit of general local government that a grantee has changed its grant application so that it no longer complies with Section 105 of the Act, or that in the administration of the grant there is a failure to comply substantially with any provision of the grant or with the requirements of Sections 703 and 704 of the Act and the matter has not been resolved informally within a reasonable period of time; or

(b) After the completion of an investigation, pursuant to § 98.45, or any formal allegation which indicates there is substantial evidence of facts supporting a conclusion of probable cause that a violation of the Act, or regulations issued pursuant thereto, has occurred or is occurring, or is about to occur, and the matter has not been resolved by informal means; or

(c) When the Secretary has reasonable cause to believe that a violation set forth in § 98.41(b) has occurred, or when the Secretary determines that fairness and the effective operation of programs under the Act would be furthered by an opportunity for a public hearing, including a finding under § 98.41 that a hearing should be provided.

§ 98.47 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by the Act, or § 98.46, and the issue has not been resolved informally, the Secretary or RA shall give reasonable notice by registered or certified mail, return receipt requested, to the affected respondent and complainant, if any. This notice shall advise the respondent of the allegations to be heard, the proposed remedial actions which may be taken, and the matters of act or law asserted as the basis for the action. The notice shall (1) fix a date not less than 20 days after the date of such notice within which the respondent may request the Secretary or RA that the matter be scheduled for hearing, or (2) advise the respondent and the complainant that the matter in question has been set by a Hearings Officer for hearing at a stated place and time. The time and place shall be fixed by a Hearings Officer in accordance with paragraph (b) of this section and shall be subject to change for cause. A respondent may waive a hearing and submit written information and argument for the record. The failure of a respondent to request a hearing under this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under the Act and this part, and shall be respondent's consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearings.* Hearings shall be held in Washington, D.C., at a time fixed by a Hearings Officer. At the request of the respondent or Department, and upon a determination by the Hearings Officer that the relative conveniences of the respondent and Department so warrant, and no issue presented involved a determination which has been made at the Department's national office can only be made at the Department's national office, the Hearings Officer may select a place for hearing in the city of the regional office of the Department or any other appropriate city.

(c) *Right to counsel.* In all proceedings under this section, the respondent and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with Section 5-8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the respondent shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the Hearings Officer conducting the hearings at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available, and to subject testimony to test by cross-examination, shall be applied where reasonably necessary by the Hearings Officer conducting the hearing. The Hearings Officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(3) The general provisions governing discovery as provided in the Rules of Civil Procedure for the United States District Court, Title V, 28 U.S.C., Rules 26 through 37, may be made applicable in any hearing conducted under this part to the extent that the Hearing Officer concludes that their use would promote the efficient advancement of the hearing.

(4) When a public officer is a respondent in a hearing in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the proceeding does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantive rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies or noncompliance with this part and the regulations of one or more other Federal departments or agencies, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 98.48.

(f) *Hearing Officers.* Hearings shall be held before an Administrative Law Judge of the Department or by such other person as may be designated by the Secretary.

§ 98.48 Initial certification, decisions, and notices.

(a) *Authority of hearing officer to render decision.* The Administrative Law Judge or other designated hearing officer is authorized to make an initial decision unless the Secretary otherwise limits this authority in a particular case.

(b) *Decisions and certifications by hearing officers.* The Administrative Law Judge, or other persons designated to hear the matter, shall make an initial decision, if so authorized (see § 98.47(f), or certify the entire record including his recommended findings of fact, conclusions of laws, and proposed decision to the Secretary for a final decision, and a copy of such initial decision of certification shall be mailed to the respondent and the complainant. When an initial decision is made the respondent may, within 30 days of mailing of such notice of initial decision, file with the Secretary his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Secretary may on his own motion within 45 days after the initial decision serve on the respondent a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review, the Secretary shall review the initial decision and issue his own decision thereon including the reasons therefor. The decision of the Secretary shall be mailed promptly to the respondent and the complainant, if any. In the absence of either exceptions or a notice of review, the initial decision shall constitute the final decision of the Secretary.

(c) *Decisions on record or review by the Secretary.* Whenever a record is certified to the Secretary for decision or he reviews an initial decision pursuant to paragraph (a) of this section, the respondent shall be given reasonable opportunity to file with him briefs or other written statements of its contentions. A copy of the final decision of the Secretary shall be given in writing to the respondent and to the complainant, if any.

(d) *Decisions on record where a hearing is waived.* Whenever a hearing is waived under this part, a decision shall be made by the Secretary on the record and a copy of such decision shall be given in writing to the respondent, and to the complainant, if any.

(e) *Rulings required.* Each decision of an Administrative Law Judge or the Secretary shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to the Act or regulations issued thereunder with which it is found that the respondent has failed to comply.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved in accordance with the Act, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and regulations issued thereunder, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the respondent determined by such decision to be in default in its performance of an assurance given by it pursuant to the Act or regulations issued thereunder, or to have otherwise failed to comply with the Act or regulations issued thereunder, unless and until it corrects its non-compliance, and satisfies the Secretary that it will fully comply with the Act and regulations issued thereunder.

§ 98.49 Judicial review.

Action taken pursuant to Section 108 of the Act is subject to judicial review as provided in Section 109 of the Act. All other action initiated under the Act and regulations issued thereunder shall be final upon a determination by the Secretary.

PART 99—PROGRAMS UNDER TITLE VI OF THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

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AUTHORITY: Comprehensive Employment and Training Act of 1973, as amended; (Pub. L. 93-203), 87 Stat. 839; Pub. L. 93-567, 88 Stat. 1845), sec. 702(a), unless otherwise noted.

SOURCE: 42 FR 55774, Oct. 18, 1977, unless otherwise noted.

Subpart A—General

§ 99.1 Scope and purpose of this Part 99.

(a) This part 99 contains the Department of Labor's regulations governing the establishment and operation of a public service and employment and training program under Title VI of the Act, as amended by the Emergency Jobs and Unemployment Assistance Act of 1974, Pub. L. 93-567, 88 Stat. 1845, and the Emergency Jobs Programs Extension Act of 1976, Pub. L. 94-444.

(b) This program, is intended to sustain enrollment under Titles II and VI of the act throughout fiscal year 1977, and to create project opportunities with funds in excess of those needed for sustaining enrollment.

(c) Provision is also made for a shift in emphasis toward serving persons who are long-term unemployed or AFDC recipients and whose family incomes are 70 percent or less of the lower living standard income level. All persons enrolled in projects must meet the above criteria. In addition, at least 50 percent of the vacancies which occur or which already exist in the Title VI level of sustainment must be filled with long-term unemployed persons and AFDC recipients. Persons filling the remaining vacancies may meet the original Title VI eligibility criteria. A prime sponsor, however, may fill all vacancies with long-term unemployed persons and AFDC recipients.

(d) Definitions for terms and abbreviations used in this part which are not found in this Part may be found at § 94.4 of this title.

(e) Prime sponsors are encouraged to develop to the maximum extent feasible ways of assuring participation of veterans in the newly created public service employment positions.

(f) Pursuant to § 98.21 of this title, prime sponsors shall assure equal employment opportunity in the selection of eligible participants for projects. In the establishment of eligibility pools for participants, prime sponsors shall have ample lead time to assure that those in the pool adequately reflect the characteristics of their unemployed populations (i.e., minorities, women).

(g) Statutory authority for the regulations contained in this part is found in section 702(a) of the Act. Other relevant sections of the Act are generally noted at the end of the substantive regulations in this part.

(h) Pub. L. 94-444 was signed into law on October 1, 1976. Therefore, as of October 1, 1976, certain provisions of Pub. L. 94-444 became immediately applicable, including sections 3(a)(1), 3(a)(2), and 11.

(i) The regulations in this part govern programs funded under the Comprehensive Employment and Training Act of 1973 prior to amendment and reauthorization in 1978 (Pub. L. 95-524, 92 Stat. 1909), and are thus in many particulars superseded by regulations implementing the reauthorized Comprehensive Employment and Training Act, Pub. Law 95-524, 92 Stat. 1909, which are being codified at 20 CFR Parts 675 *et seq.* Any questions regarding the applicability of any particular regulation in Title 29 should be addressed to the Regional Administrator for the Employment and Training Administration.

[42 FR 55774, Oct. 18, 1977, as amended at 44 FR 37911, June 29, 1979]

§ 99.2 Allocation of funds.

(a) The Secretary shall allocate not less than 2 percent of the funds available for Title VI of the Act to those eligible applicants defined in § 99.3 which are Indian tribes, bands, and groups qualified under section 302(c)(1) of the Act (sec. 602(e) and sec. 603(a)(1)).

(b) Not less than 90 percent of the funds remaining after the application of paragraph (a) of this section shall be allocated among eligible applicants defined in § 99.3 which are prime sponsors under Title I of the Act according to the following basic formula (sec. 603(a)(1)):

(1) Fifty percent of the funds shall be allocated among eligible applicants in proportion to the relative number of unemployed persons who reside in areas within the jurisdiction of such applicants compared to the number of unemployed persons who reside in all eligible applicants' areas in all the States (sec. 603(a)(2)(A)).

(2) Twenty-five percent of the funds shall be allocated among eligible applicants on the basis of the ratio of the excess number of unemployed persons, as defined below, who reside within the jurisdiction of the eligible applicant to the total excess number of unemployed persons who reside within the jurisdiction of all eligible applicants. In allocating funds to an eligible applicant which is not a State, the term "excess number" shall mean the number of unemployed persons in excess of 4.5 percent of the labor force who reside in the jurisdiction of the eligible applicant. For allocating funds to an eligible applicant which is a

State, the term "excess number" shall mean either the number of unemployed persons in excess of 4.5 percent of the labor force who reside in the jurisiction of the eligible applicant, or the number of unemployed persons in excess of 4.5 percent of the labor force in areas eligible for assistance under Title II of the Act in the geographical area served by such State prime sponsor (under Title I or Title II), whichever is greater (sec. 603(a)(2)(C)).

(3) Twenty-five percent of the funds shall be allocated for use on behalf of residents of areas of substantial unemployment. An area of substantial unemployment, other than in relation to Indian tribes, bands, and groups, is any area within a prime sponsor's jurisdiction which has a population of at least 10,000 persons, qualifies for a minimum allocation of $25,000 under Title II of the Act, and has a rate of unemployment of at least 6.5 percent for a period of three consecutive months as determined by the Secretary of Labor at least once each fiscal year. These funds shall be allocated in accordance with the number of unemployed persons residing in areas of substantial unemployment within the jurisdiction of the eligible applicant as compared to the total number of unemployed persons residing in all areas of substantial unemployment (sec. 603(a)(2)(B)).

(c)(1) The remaining funds, not to exceed 10 percent of the funds remaining after application of paragraph (a) of this section, may be distributed to prime sponsors under Title VI by the Secretary as the Secretary deems appropriate to carry out the purpose of Title VI, taking into account both changes in rates of unemployment, and the need for additional funds to continue the same level of public service employment activities previously supported under the Act within the jurisdiction of the eligible applicant (sec. 603(b)).

(2) When any portion of these funds is to be allocated using a formula, the Secretary shall not later than 30 days prior to such allocation publish in the FEDERAL REGISTER the specific formula for such distribution, the rationale behind the selection of the formula and the proposed amount for distribution to each eligible applicant. After consideration of comments received within 30 days of the FEDERAL REGISTER notice, the Secretary shall publish final allocations (sec. 603(d)).

(d) For purposes of paragraphs (b) and (c) of this section, the term "jurisdiction" means the jurisdiction of each unit of general local government as described in § 95.3(a)(2) of this subtitle, whether or not such unit has entered into a consortium of units of general local government for the purposes of § 95.3(a)(3) of this subtitlte (sec. 603(c)).

(e)(1) An eligible applicant shall distribute to a program agent, as defined in paragraph (e)(3) of this section, funds to be utilized to serve residents of the program agent's area unless the program agent declines to operate a program. In which case, the eligible applicant shall make other arrangements to serve the residents of the program agent's jurisdiction (sec. 204(d)(1)).

(2) If the Secretary does not specify an amount to be distributed to a program agent, the eligible applicant shall distribute funds to the program agent using the same rationale used by the Secretary in distributing funds to eligible applicants.

(3) The term "program agent" under this part shall mean any unit of general local government (or combination of such units) located within an eligible applicant's jurisdiction which has a population of 50,000 or more (sec. 204(d)(1)).

(4) Notwithstanding paragraph (e)(1) of this section, a program agent which is a member of a consortium may make agreements agreed to by the consortium for the administration of funds for the benefit of the residents of the eligible program agent's area.

§ 99.3 Eligibility for funds.

(a) Funds shall be allocated by the Secretary only to eligible applicants. The term "eligible applicant" shall mean prime sponsors qualified for Fiscal Year 1977 under Title I of the Act and Indian tribes, bands, and groups qualified for Fiscal Year 1977 under section 302(c)(1) of the Act (sec. 602(e)).

(b) A State shall not qualify as an eligible applicant for any geographical area within the jurisdiction of any other eligible applicant which is a unit of local government, within the State unless the non-State eligible applicant has not submitted an approvable application for Title VI funds, or has stated to the Regional Administrator, in writing, its desire to be served by the State (sec. 204(a)).

(c) A unit of general local government shall not qualify as an eligible applicant with respect to any area within the jurisdiction of another eligible unit of general local government unless the other unit has not submitted an approvable application for such areas, or has stated its desire to the RA, in writing, to be served by such larger unit (sec. 204(a)).

(d)(1) An eligible applicant shall distribute funds to program agents as provided in § 99.2(e) (sec. 204(d)(2)).

(2) No program agent shall receive or continue to receive funds for any area within the jurisdiction of another program agent unless the RA determines that the other program agent has not carried out its administrative responsibility consistent with the application for financial assistance developed by the eligible applicant for developing, funding, overseeing, and monitoring programs within its area (sec. 204(d)(3)).

(e) Funds for areas of substantial unemployment.

(1) An eligible applicant or program agent which contains an area or areas of substantial unemployment shall make available for services to residents of each such area those funds allocated to the eligible applicant under § 99.2(b)(3) (sec. 603(a)(2)(b)).

(2) An eligible applicant other than a State, or a program agent, whose entire jurisdiction qualifies as an area of substantial unemployment, shall, to the extent feasible, allocate funds allocated under 99.2(b)(3) according to § 96.3(f)(1) of this subtitle.

(3) If the eligible applicant is a State whose entire jurisdiction qualifies as an area of substantial unemployment, the eligible applicant shall, to the extent feasible, allocate the funds allocated to it under § 99.2(b)(3) according to § 96.3(f)(2) of this subtitle.

(4) If an eligible applicant believes that there is an area of substantial unemployment within its jurisdiction that has not been designated as such by the Secretary it may recommend that such area be considered by the Secretary. In making any such recommendation, the eligible applicant must include a precise geographical definition of the area to be served and population data. Such recommendation shall be submitted to the RA. The Secretary shall, within a reasonable time, make a determination on the recommendation and inform the eligible applicant of the decision and the reasons therefore.

Subpart B—Grant Application

§ 99.10 General.

(a) This subpart contains the procedures for obtaining grants to operate programs under Title VI of the Act (sec. 602(a)).

(b) The Secretary reserves the right to temporarily waive any of the grant procedures in this subpart and provide immediate funding authority when, and if, strict adherence to a procedure would result in a funding delay which would necessitate the layoff of currently employed participants.

§ 99.11 Planning process; advisory councils.

To receive financial assistance under Title VI of the Act, eligible applicants shall submit an appropriate comprehensive Title VI plan, pursuant to § 99.12. In developing and modifying such a plan, an eligible applicant shall utilize the planning process and the advisory councils pursuant to § 95.13 (b), (c), (d), and (e) of this subtitle.

§ 99.12 Content and description of grant application.

(a) To apply for a grant, each eligible applicant shall complete and submit a grant application.

(b) Copies of all grant application forms and instructions are contained in the Forms Preparation Handbook (ET Handbook No. 311).

(c) Each grant application shall consist of an Application for Federal Assistance, a Comprehensive Title VI Plan, Assurances and Certifications, and a Grant Signature Sheet. §§ 99.13-16 describes the contents of the grant application.

§ 99.13 Application for Federal assistance.

The Application for Federal Assistance identifies the eligible applicant and the amount of funds requested. It provides information concerning the area to be served and the number of people expected to benefit from the program. The Standard Form 424 contained in Federal Management Circular (FMC) 74-7 is being used as the Application for Federal Assistance.

§ 99.14 Comprehensive Title VI Plan.

(a) The Comprehensive Title VI Plan is a statement of how the eligible applicant intends to use Title VI funds and to coordinate its activities with other employment and training programs and services operating within its jurisdiction. The Comprehensive Title VI Plan consists of the Narrative Description of the Title VI Program, the Program Planning Summary, the Budget Information Summary, the Monthly Schedule, the Public Service Employment Occupational Summary, the Project Data Summary, and the Program Summary which are described below in paragraphs (b) through (h) of this section.

(b) The Narrative Description of the Title VI program identifies and explains the employment and training problems within the eligible applicant's jurisdiction, describes proposed program activities and delivery systems to deal with those problems, and states the results expected from the program. The Narrative Description requirements in this paragraph (b) are an abbreviated version of the Narrative Description requirements for Title II (§ 96.14(b)(2)(1) of this title). If the information required has already been provided in the current Title II Narrative Description. a copy of the Title II Narrative Description may be attached in order to comply with the requirements in this paragraph. The Narrative Description of the Title VI program must include the following items:

(1) *Objectives and needs for the assistance.* (i) Program purpose; and

(ii) Analysis of need—A brief description of the labor market of the area including labor force and a description of the population groups most in need of services at this time.

(2) *Results and benefits expected.* This item should explain how the quantified results in Section I of the PPS impact on the needs of the labor force and the community services to be provided.

(3) *Approach.* (i) What provisions have been made to sustain the June 30, 1976, level of enrollment in both Titles II and VI, or to retain the October 31, 1976 level, if higher?

(A) Identify the June 30, 1976, level of enrollment in Titles II and VI. Identify the October 31, 1976, level, if different.

(B) Identify the level of enrollment at the time of grant execution, if higher than either of the preceding. If the level of enrollment is higher, describe how these excess participants will be accommodated (e.g., transfer to projects, terminate, place in jobs).

(C) Estimate the amount of funds it will take to sustain the June 30, 1976, level of enrollment or to retain the October 31, 1976, level of enrollment, whichever level of enrollment is higher.

(D) Identify the number of participants that will be sustained under Title II.

(E) Identify the number of participants that will be in the Title VI level of sustainment.

(F) If any former participants are to be reinstated in the program under the provisions of § 99.40(c), state the number of individuals involved. Submit adequate documentation to allow the RA to determine that such individuals qualify for reinstatement, including the name, position, date of termination and reason for termination of each participant and any additional information required by the RA.

(ii) Describe the methods which will be used to provide any training and supportive services to long-term unemployed persons.

(iii) Provide the estimated average annual wage rate for PSE occupations and the method of obtaining this wage rate, keeping in mind the aim of obtaining a nationwide rate of $7,800.

(iv) Describe unmet public service needs.

(v) Describe the method of recruiting low-income AFDC recipients and long-term unemployed persons, and the method which will be used to verify such persons' eligibility for the program. Describe the procedures that will be used to track and monitor the flow of participants in order to comply with the different eligibility requirements of § 99.42 (a) and (b).

(vi) Explain the basis for distributing funds within the eligible applicant's area.

(vii) Describe what steps will be taken to provide services to disabled, special and recently discharged veterans and to welfare recipients.

(viii) For newly eligible applicants, eligible applicants operating independently for the first time and eligible applicants serving geographical area(s) in addition to that served in the previous program year, describe the continuity of service to be provided.

(ix) Describe the process for selecting delivery agents and project operators including:

(A) The methods and criteria to be used in the selection of delivery agents and project operators;

(B) The methods and criteria to be used for soliciting and approving project applicants.

(x) Describe the linkages established with other employment and training and related agencies.

(xi) Identify the percentage of Title VI positions planned to be filled with veterans.

(4) *Management and administrative plan.* (i) Provide an organizational chart.

(ii) Describe internal administrative controls, including personnel or merit system and grievance procedures.

(5) *Maintenance of effort data.* Estimate the number of jobs that will be filled by rehiring former employees who have been terminated or laid off. (Under § 99.34, the RA may request additional documentation on this item.)

(c) *Program planning summary.* The program planning summary requires an eligible applicant to provide a quantitative statement of planned enrollment levels, the participants to be served by each program activity (classroom training, on-the-job training, public service employment, work experience, and other activities), and planned outcomes for program participants. It also requires an identification of the significant segments of the population and the number of individuals in each to be served.

(d) *Budget information summary.* The budget information summary requires an eligible applicant to:

(1) Provide a quantitative statement of planned expenditures and obligations;

(2) Indicate yearly planned expenditures by cost category (administration, allowances, wages, fringe benefits, training, and services); and

(3) State planned quarterly obligations and planned expenditures by program activity.

(e) *Monthly schedule.* the monthly schedule contains an estimate of total number of participants who will be enrolled in Title VI programs at the end of each month and of the total cumulative expenditures expected to have been incurred by the end of each month.

(f) *Public service employment occupational summary.* The public service employment occupational summary provides a description of proposed job opportunities, occupations and wages for similar nonsubsidized jobs in the employing agency at the sustaining level. The above information should not be provided for projects.

(g) *Project data summary.* The project data summary provides a description of each proposed project.

(h) *Program summary.* The program summary presents a distribution of jobs, training slots, and funds to be provided to eligible applicants and subgrantees. It designates the area to be served, the population and employing agencies of each area. The above information should not be provided for projects.

§ 99.15 Assurances and certifications.

(a) The assurances and certifications form is a signature sheet on which the eligible applicant assures and certifies that it will comply with the Act, the regulations of the Department, other applicable laws, and applicable Federal Management Circulars and Office of Management and Budget (OMB) circulars. The assurances and certifications form will be provided in the grant application package.

(b) When prime sponsors are planning to fund job opportunities authorized under Section 304(a) of the Act, paragraphs (3), (4), (5), and (6), they must submit a certification to the RA in the grant application that such activities are necessary to provide sufficient job opportunities in the area served by the prime sponsor (sec. 604(a)).

§ 99.16 Grant Signature Sheet

The Grant Signature Sheet records the acceptance by the grantee and grantor of the terms and conditions of the grant and any changes to the grant. It records the time period for which the grant is effective, the grant allotment, the amount of funds obligated by the RA to the grantee, the Title of the Act under which funding is authorized and the name, title and signature of the approving official on both sides.

§ 99.17 Comment and publication procedures relating to submission of grant application.

(a) Each eligible applicant shall provide an opportunity for comment on the application as set out in § 95.15 of this subtitle, except that newspaper publication and provision of the application to Governors, appropriate units of government, appropriate Indian prime sponsors, and appropriate labor organizations may be simultaneous with submission of the grant application to the RA.

(b) Each eligible applicant shall submit a copy of its grant application to appropriate State and sub-State clearinghouse(s) at the same time that it submits its application to the RA.

§ 99.18 Submission of grant application; standards for reviewing grant applications.

(a) Each eligible applicant shall submit its grants application to the RA on or before a date set by the Secretary.

(b) A grant application shall include all items set out in § 99.12.

(c) A grant application will be reviewed to determine if it meets the requirements of the Act, the regulations promulgated under the Act, and other applicable law. In reviewing a grant application, the RA shall use the standards set forth in § 95.17(b) of this subtitle.

§ 99.19 Application approval; application disapproval; grant agreement.

The procedures set forth in §§ 95.18 and 95.19 of this subtitle shall apply for Title VI applications and grant agreements.

§ 99.20 Use of alternative eligible applicant; services by the Secretary.

The provisions detailed in § 95.20 of this subtitle shall apply to applications and grants made pursuant to Title VI of the Act.

§ 99.21 Modifications.

The modification procedures set forth in § 95.21 of this subtitle shall apply to Title VI grants.

Subpart C—Program Operation Requirements for Prime Sponsors

§ 99.30 General.

(a) This subpart contains the program operation requirements governing prime sponsors with respect to the creating and expanding of public service job opportunities for unemployed and underemployed persons (secs. 205, 602(a)).

(b) This subpart also contains special provisions governing prime sponsors of areas of excessively high unemployment, which include:

(1) Prime sponsors of areas having an average unemployment rate in excess of 7 percent for the most recent three consecutive months based upon the best available information and

subject to review by the RA, and which certify to the RA in the grant application or a request for modification that the application of the special provisions for areas of excessively high unemployment are necessary in order to provide sufficient job opportunities in the area;

(2) Prime sponsors which are "exceptional circumstance" prime sponsors under section 102(a)(4) of the Act and which certify to the RA in the grant application or a request for modification that application of the special provisions for areas of excessively high unemployment are necessary in order to provide sufficient job opportunities in the area;

(3) Prime sponsors which are "concentrated employment program" prime sponsors under section 102(a)(5) of the Act and which certify to the RA in the grant application or a request for modification that the application of the special provisions for areas of excessively high unemployment are necessary in order to provide sufficient job opportunities in the area; and

(4) Prime sponsors which are State prime sponsors serving areas which are eligible for assistance under Title II of the Act and which certify to the RA in the grant application or a request for modification that the application of the special provisions for areas of excessively high unemployment are necessary in order to provide sufficient job opportunities in the Title II area.

§ 99.31 Basic responsibilities of prime sponsors; basic responsibilities of program agents.

(a)(1) A prime sponsor shall administer its programs under Title VI of the Act pursuant to the provisions of § 96.21 of this subtitle.

(2) A prime sponsor of an area of excessively high unemployment shall administer its programs under Title VI of the Act pursuant to the provisions of § 96.21 of this subtitle, except that the provisions of § 96.21 (c), (d) and (e) of this subtitle shall not apply.

(b) The responsibilities of program agents, as defined in § 99.2(e)(3), shall be those provided in § 96.22 of this subtitle.

§ 99.32 Program performance requirements for prime sponsors.

(a) A prime sponsor shall use funds under Title VI of the Act in accordance with the expenditure levels and enrollment levels described in the approved Comprehensive Title VI Plan and within the monthly schedule.

(b)(1) The RA shall review the program performance of each prime sponsor's on a monthly basis and determine the adequacy of the prime sponsors performance with respect to the expenditure and enrollment levels provided for in the Program Planning Summary, Budget Information Summary, and the monthly schedule.

(2) If a prime sponsor operates at a level in variance from the monthly schedule, the RA may prescribe corrective action and/or technical assistance.

(c) The RA, on a monthly basis, shall make a general review of the prime sponsor's performance and goals to determine the responsiveness of the prime sponsor's program to the unemployment rates of its area and the employment needs of the persons within its jurisdiction.

§ 99.33 Public service job activities in the Title VI level of sustainment.

(a) A prime sponsor may use funds reserved for sustaining enrollment under Title VI to provide:

(1) Public service jobs which provide maximum employment opportunities for eligible persons (sec. 602(a));

(2) Public service employment programs which meet the requirements of § 96.23 of this subtitle (sec. 602(a));

(3) Basic manpower activities and services described in § 95.33(d) (1), (2), (4), (5), and (6) of this title (sec. 201);

(4) Job opportunities with public employers, as described in paragraphs (3), (4), (5), and (6) of section 304(a) of the Act, if the prime sponsor certifies to the RA in the grant application or a modification that such activities are necessary to provide sufficient job opportunities in the area served by the prime sponsor (sec. 640(a));

(5) Where funds are utilized pursuant to paragraphs (a)(3) and (a)(4) of this section, all provisions under this part shall apply, except for references

in such provisions to §§ 96.20, 96.21 (b) (c) (d) (e) (g) and (h), 96.23, 96.31, 96.32, 96.33, and 96.34 of this subtitle. In addition, those provisions applicable for program under Title I, or Part A of Title III shall apply. However, when Title VI funds are used to fund public service employment, all of the provisions of this part shall apply.

(b) Funds allocated to prime sponsors of areas of excessively high unemployment may also be used for public service employment programs which meet the requirements of § 96.23 of this subtitle, except that § 96.23(b) (2), (3), and (8) shall not apply.

§ 99.34 Maintenance of effort.

(a) Public service jobs funded under Title VI of the Act shall only be in addition to employment which would otherwise be financed by the prime sponsor without assistance under the Act (sec. 602(c), 205(c)(25)).

(b) To assure maintenance of effort, the prime sponsor shall see that all programs under Title VI of the Act:

(1) Shall result in an increase in employment opportunities over those which would otherwise be available;

(2) Shall not result in the displacement of currently employed workers, including partial displacement such as a reduction in hours of nonovertime work, wages, or employment benefits;

(3) Shall not impair existing contracts for services or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed; and

(4) Shall not substitute public service jobs for existing federally assisted jobs under federally supported programs other than those under the Act (secs. 602(c), 208(a)(1)).

(c) Prime sponsors, program agents and subgrantees may not terminate, layoff, or reduce the working hours of, an employee in anticipation of hiring an individual with funds available under Title VI. In addition, no participant shall be used to fill positions or provide services normally provided by temporary, part-time, or seasonal workers or contracted out, or to fill full-time vacancies, unless documentation is maintained, as provided in paragraph (h) of this section, that such action does not constitute a substitution of Federal funds for purposes that would otherwise have been supported by other resources.

(d) No prime sponsor shall hire or allow the hiring of any person into any job funded under this part when any other person is on layoff from the same or any substantially equivalent job (secs. 602(c), 205(c)(7)(8)). If layoffs of regular employees occur during the grant period, participants may not remain working in the same or substantially equivalent job within the employing agency that is affected by the layoff. Such participants shall be transferred to positions not affected or be laid off or terminated. Prime sponsors shall try to transfer them to Title I, if appropriate, or shall attempt to place them into unsubsidized employment before laying them off or terminating them (secs. 602(c), 205(c)(7)(8)).

(e) Former employees who lost their jobs due to a bona fide lay-off may be hired into positions supported under this Part provided that such hiring does not constitute a violation of the maintenance of effort provisions of the Act and these regulations.

(f) No participant may be placed or remain working in any position substantially equivalent to a position which is vacant due to a hiring freeze unless the prime sponsor can demonstrate that:

(1) The freeze resulted from a lack of funds to sustain former staff levels and was not established because of the availability of funds under this part; and

(2) The promotional opportunities of regular employers will not be infringed upon.

(g) Prime sponsors shall notify the RA in writing of any layoff or hiring freeze in a department or agency where participants are employed in positions substantially equivalent to those affected by the layoff or hiring freeze.

(h) Prime sponsors, program agents, or subgrantees which utilize funds under this part to hire persons to fill positions previously supported by funds other than funds available under the Act or to provide services which are normally provided by temporary, part-time or seasonal workers or which are normally contracted out, shall maintain documentation that such use of funds does not constitute a violation of paragraph (c) of this section nor of any other requirements of this section. Such documentation shall be prepared and maintained in a form which clearly demonstrates that all requirements of this section are complied with and shall be readily available for the inspection of the RA for a period of not less than one year subsequent to the filling of any position to which these provisions are applicable. Prime sponsors shall, at the direction of the RA, submit such documentation or any budgetary expenditure records, revenue statements, and other information relevant to determinations under this section. RA's shall not approve any plan unless prime sponsors have submitted, when directed by the RA, conclusive evidence that the proposed use of funds fully meets the requirements of this section.

(i) Funds shall not be used to provide public services, through a private or non-profit organization or institution, which are customarily provided by a State, a political subdivision, or a local educational agency in the area if such funding will result in a reduction of the customary level of such service by the State, political subdivision, or local educational agency.

(j) RA's and prime sponsors shall carefully review all programs to insure compliance with all maintenance of effort requirements.

§ 99.35 Linkages with other employment and training programs; training and supportive services.

(a) Each prime sponsor, where appropriate, shall maintain linkages with other employment and training programs as provided under the provisions of § 96.32 of this subtitle.

(b) As appropriate, each prime sponsor shall provide training and supportive services for participants as specified by § 96.31 of this subtitle.

§ 99.36 Placement goals.

Public service employment programs, to the extent feasible, shall meet placement goals as described in § 96.33 of this subtitle (secs. 602(c), 211(b)). The provisions of § 96.33(c)-(f), however, shall not be applicable to participants in projects as described in § 99.40(a)(2).

§ 99.37 Compensation and working conditions for participants.

(a) Participants in public service employment programs and projects shall be compensated pursuant to § 96.34 of this subtitle.

(b) A prime sponsor may establish, on an area basis, jobs and wage structures, for participants, taking into account the average wages in the area served and the cost of living in such areas, with the aim of effecting a nationwide federally supported annual average wage rate equivalent of $7,800 per full-time position within the overall $10,000 federally supported salary limitation provided to public service job holders. However, this provision in no way is intended to relieve a prime sponsor from compensating participants in accordance with paragraphs (a), (c), (d), (e), and (f) of this section. The RA is authorized to make recommendations, on an area basis, to prime sponsors pertaining to the provisions set forth in this paragraph.

(c) Participants in classroom training programs shall be compensated pursuant to § 95.34 of this subtitle.

(d) Participants in on-the-job training programs and projects shall be compensated pursuant to § 95.35 of this subtitle.

(e) Participants in work experience programs shall be compensated in accordance with § 95.33(d)(4)(viii) of this subtitle. When participants enrolled in work experience are working in projects, wages shall equal the highest of either of the rates specified in § 95.33(d)(4)(viii) of this subtitle or the prevailing rates of pay for persons employed in similar occupations by the same employer. When a participant in a work experience activity is performing the tasks of a regular public service employment type job, wages must be comparable to those paid for the regular public service job, as specified in § 96.34 of this subtitle.

(f) The salary limitations specified in § 96.34(c) of this subtitle shall apply to compensation provided participants under Title VI.

(g) Participants in public service employment may only be placed in above entry level positions or in supervisory positions in projects to the extent consistent with the provisions of § 96.23(b) (11) and (12) of this subtitle.

§ 99.38 Place of residence for participants.

(a) *General.* (1)(i) At time of both application and selection, program participants shall reside within the geographic area for which funds have been designated. A program agent, therefore, may not hire persons outside of its jurisdiction nor may a prime sponsor hire a person from the jurisdiction of another prime sponsor or of a program agent within its own jurisdiction.

(ii) Because of changes in program agent designations each program year, this policy does not require the layoff of participants eligible under the residency requirements that were applicable at the time of their selection.

(2) A prime sponsor or program agent may receive additional funds as a subgrantee of another prime sponsor or program agent to enroll residents of the other prime sponsor's or program agent's jurisdiction in any public service job or other manpower program under Title VI. The prime sponsor or program agent receiving funds must offer jobs or programs which are within reasonable commuting distance of residents of the other prime sponsor's or program agent's jurisdiction.

(3) *Consortia of eligible applicants.* If two or more jurisdictions eligible to be prime sponsors have found a consortium to operate programs under Titles I, II, and VI, residents of any designated area within the boundaries of the consortium may be employed in public service jobs or enrolled in any other manpower activity either within the geographical boundaries of the consortium or outside such boundaries in which case the provisions of § 96.23(b)(7) of this subtitle shall apply: *Provided,* That the total amount of funds spent for residents of each participating prime sponsor equals the amount of funds that the area would have received if the consortium had not been formed.

(b) Funds provided under § 99.2(b)(3) shall be used only on behalf of residents of geographic areas eligible for assistance under Title II of the Act.

(c) *Consortia of units of general local government formed in order to qualify as program agents; multijurisdictional prime sponsors.* The provisions of paragraphs (a) and (b) of this section shall apply to consortia of units of general local government formed in order to qualify as program agents and shall apply to multijurisdictional prime sponsors.

Subpart D—Program Operation Requirements Under the Emergency Jobs Programs Extension Act of 1976

§ 99.40 Apportionment of the prime sponsor's allocation.

(a) *General.* (1)(i) Each prime sponsor shall reserve from the funds available during Fiscal Year 1977 for its use under Title VI, an amount which, when added to the funds available during Fiscal Year 1977 for its use under Title II, shall be sufficient to sustain throughout FY 1977 the number of Titles II and VI participants who were in the program on June 30, 1976.

(ii) However, if the number of participants enrolled in Titles II and VI on October 31, 1976, plus any rehires who were terminated from Titles II and VI and who are approved for reinstatement in accordance with paragraph (c) of this section, is higher than the June 30, 1976, level of participants, the prime sponsor may reserve funds to carry the higher level into the new grant period. The prime sponsor should be aware, however, that its allocation, which shall be keyed to the June 30, 1976 level, may not be sufficient to operate at the higher level throughout FY 1977.

(iii) (A) Funds reserved in accordance with paragraph (a)(1)(i) of this section shall not be used to support a level of opportunities in excess of the June 30, 1976, level or the level of opportunities on the date of grant execution.

(B) Funds reserved in accordance with paragraph (a)(1)(ii) of this section shall not be used to support a level of opportunities in excess of the October 31, 1976, level plus any rehires who have been approved for reinstatement under paragraph (c) of this section or the level of opportunities on the date of grant execution.

(iv) Where the enrollment level at the time of grant execution is higher than the Title VI level of sustainment, prime sponsors may transfer these excess participants into projects or into their programs under Titles I or II, to the extent that the participants being transferred met the appropriate eligibility criteria at the time of enrollment in CETA.

(2) Funds remaining after the application of paragraph (a)(1) of this section shall be used for new projects as defined in § 94.4(ooo) of this title, not to exceed 12 months and subject to the approval procedures in § 99.41 (sec. 607 (b)).

(b) *Enrollment of Title VI participants.* (1) At least fifty percent of the participants enrolled in vacancies or openings in the Title VI level of sustainment shall meet the eligibility criteria in § 99.42(a).

(2) Those vacancies not filled by individuals meeting the new eligibility criteria shall be filled by individuals meeting the eligibility criteria in § 99.42(b).

(3) All participants enrolled in projects as specified in §§ 99.40(a)(2) and 99.41 shall meet the eligibility criteria in § 99.42(a) of this part.

(4) Individuals enrolled in Title VI may be rehires as defined in § 94.4(qqq), of this title, provided that the maintenance of effort provisions of § 99.34 are not violated. In addition, prime sponsors may give preference to unemployed, qualified former health and safety personnel for public health and safety positions, when selecting individuals pursuant to paragraph (b)(2) of this section (sec. 607(c)(2)).

(5) The cumulative and current number of participants meeting the eligibility criteria in § 99.42(a) who are enrolled in vacancies or openings in the Title VI level of sustainment shall at all times approximate 50 percent or greater of all participants enrolled in vacancies or openings in the Title VI level of sustainment.

(6) In paragraphs (b), (1), (2), and (3) of this section, persons enrolled after grant execution shall not include Title II participants who are moved into Title VI during the initial separation of Titles II and VI participants.

(c) Any rehire who, after June 30, 1976, and before October 1, 1976, was laid off from a job supported under Titles II and VI because of the provisions of § 96.24 (e) and (f) of this subtitle may be reinstated by the prime sponsor into a Title VI position supported pursuant to paragraph (a)(1) of this section without regard to requirements of paragraphs (b) (1) and (2) of this section. However, reinstatement shall be subject to RA determination that they were laid off because of § 96.24 (e) and (f), after review of information provided in § 99.14(b)(3)(i)(F). The reinstatement provision of this section shall not relieve a prime sponsor from compliance with § 99.34(d) (sec. 609(c)).

§ 99.41 Project approval

(a) Funds remaining after funds are reserved for supporting the level of opportunities determined in § 99.40(a)(1) shall be utilized for public service jobs in new projects, as defined in § 94.4(ooo), not to exceed one year in duration. (As part of these new projects, prime sponsors may utilize those funds for manpower program activities as described in § 95.33(d) (1), (2), (4), (5), (6), and (7) of this title (sec. 607(b)).

(b) Such projects shall be funded as follows:

(1) Each prime sponsor shall establish procedures for its own use and the use of its program agents for notifying potentially eligible project applicants (as defined in § 94.4(ppp) of the application process and cut-off date for acceptance of applications.

(2) Each prime sponsor is responsible for establishing procedures for its own use and the use of its program agents, whereby, upon receipt, a copy of each project application shall be submitted to the prime sponsor's planning council to allow the council to submit comments and recommendations with respect to the application (sec. 609(a)).

(i) No member of a prime sponsor's planning council shall cast a vote on any matter in connection with a proposed project in which that member (or any organization with which that member is associated) has a direct interest (sec. 609(a)).

(3) Prime sponsors and program agents should give consideration to providing a substantial portion of the project funds to project applicants which are nonprofit agencies.

(4) In reviewing project applications, prime sponsors, and program agents should carefully consider any proposed expenditures for materials, supplies, equipment, and space in relation to the duration of the proposed projects.

(5) Prime sponsors and program agents shall not disapprove a project application without first considering any comments and recommendations submitted by the planning council and providing the project applicant and the council with a written statement of the reasons for the disapproval (sec. 609(b)).

(6) In program agent areas, decisions on approving or disapproving project applications shall be made in accordance with § 96.22 of this subtitle.

(7) Appropriate labor organizations should be consulted in the design of projects where collective bargaining agreements exist with the employing agency.

§ 99.42 Eligibility for participation in Title VI programs.

(a) The following criteria shall be used by prime sponsors in determining participant eligibility pursuant to § 99.40(a)(2) and (b)(1) and in selecting participants for these positions (sec. 608(a)).

(1) An eligible person must either be economically disadvantaged as defined in § 94.4(s) of this subtitle or be a member of a family which has a current total family income, determined pursuant to paragraph (a)(2) of this section, at or below 70 per centum of the lower living standard income level, as defined in § 94.4(nnn), and must meet the residency requirements of § 99.38 of this part, and must be a person.

(i) Who, during 15 of the 20 weeks immediately prior to application, has been unemployed as defined in § 94.4 (uuu) of this subtitle or has been receiving unemployment compensation: *Provided*, That during the 20-week period, the eligible person shall not have obtained permanent, unsubsidized, full-time employment; or

(ii) Who, during 15 of the 20 weeks immediately prior to application, has had a combination of weeks of unemployment and weeks of receiving unemployment compensation as described in paragraph (a)(1)(i) of this section: *Provided*, That during the 20-week period, the eligible person shall not have obtained permanent, unsubsidized, fulltime employment; or

(iii) Who is unemployed as defined in § 94.4(uuu) of this subtitle at the time of application and is an exhaustee as defined in § 94.4(rrr) of this subtitle; or

(iv) Whose family is receiving Aid to Families with Dependent Children (AFDC) including AFDC-Unemployed Fathers, under Title IV of the Social Security Act.

(2) (i) In determining current family income, the prime sponsor shall annualize, based on the three months preceding application, total family income, utilizing the same exclusions (e.g., unemployment compensation) used to determine family income for the Participant Record.

(ii) In instances where, due to seasonal employment, summer employment for youth, or other circumstances, the three months period is unrepresentative, the prime sponsor shall compute family income by totaling all family income received during the twelve months prior to application, except for those exclusions indicated in paragraph (a)(2)(i) of this section (sec. 608(a)(2).

(3) The prime sponsor shall take reasonable steps to insure that funds used pursuant to § 99.40 (a)(2) and (b)(1) are equitably allocated among the categories of eligible persons described in subdivisions (i), (ii), (iii), and (iv) of paragraph (a)(1) of this section. Such equitable allocation shall be made in light of the composition of the population of unemployed eligible persons served by the primary sponsor, to the

extent that such data are available. No one group shall be served exclusively, and no group shall be excluded from service (sec. 608(c)).

(4) Participants under Title I, Title IV, section 302 and section 303 of the Act, participants under Sections 5 and 6 of the Emergency Employment Act, and participants under Title X of the Public Works and Economic Development Act who are enrolled in Title II or VI activities funded through the Department, may be transferred pursuant to § 99.40 (a)(2) or (b)(1) if they met the requirements of paragraph (a)(1) of this section and § 99.38 at the time of their entry into the program from which they are being transferred, and if maximum efforts have been made to place such individuals in unsubsidized employment or training (sec. 105(a)(2)).

(5) A veteran who has served on active duty for a period of more than 180 days or who was discharged or released from active duty for a service connected disability, shall be immediately eligible, upon release discharge, for participation in a project under § 99.40 (a)(2) and (b)(1) without regard to paragraphs (a)(1) (i), (ii), (iii), and (iv) of this section which would otherwise pertain (38 U.S.C. 2013): *Provided,* The veteran has not obtained permanent full-time unsubsidized employment between the time of release and the time of application for participation in Title VI.

(b) In order to be eligible pursuant to § 99.40(b)(2), an individual shall be:

(1)(i) A person who has been unemployed for at least 30 days, as defined in § 94.4(hhh), prior to application, or who is underemployed, as defined in § 94.4(fff), and who meets the residence requirements of § 99.38, is eligible pursuant to § 99.40(b)(2). The term residence is defined in § 96.27(f) of this subtitle; or

(ii) A person who has been unemployed for at least 15 days, as defined in § 94.4(hhh), except for the provision of § 94.4(hhh)(3), prior to application, or who is underemployed, as defined in § 94.4(fff) and who meets the residence requirements of § 99.38, is eligible for a job funded under § 99.40(b)(2) in areas of excessively high unemployment.

(2) A veteran who has served on active duty for a period of more than 180 days or who was discharged or released from active duty for a service connected disability, shall be immediately eligible, upon release, for participation in an activity under § 99.40 (a)(1) and (b)(2) without regard to the 15- or 30-day unemployment requirement which would otherwise pertain (38 U.S.C. 2013): *Provided,* The veteran has not obtained permanent, full-time unsubsidized employment between the time of release and the time of application for participation in Title VI.

(3) A person participating in a public employment program under a Section 5 or Section 6 grant funded by the Emergency Employment Act (EEA) may be transferred into an activity under § 99.40(b)(2), in order to provide for the orderly phaseout of the EEA grant, if he/she met the requirements of § 99.38 at the time his/her entry into EEA, and provided that maximum efforts have been made to place such an individual in unsubsidized employment or training.

(4) Title I, Title II, Title IV, section 302, and section 303 participants under the Act, and participants under Title X of the Public Works and Economic Development Act, who are enrolled in Titles II or VI activities funded through the Department may be transferred pursuant to § 99.40(b)(2) only if they met the requirements of paragraph (b)(1) of this section at the time of their entry into the program from which they are being transferred, and if maximum efforts have been made to place such individuals in unsubsidized employment or training (sec. 105(a)(2)).

(5) A person participating in a WIN public service employment program under Part C, Title IV, of the Social Security Act, who leaves or is removed from a public service employment position, shall be treated in the same manner as any other such applicant with respect to eligibility pursuant to § 99.40(b)(2):

(i) If such an individual is still receiving cash welfare payments, that individual meets the definition of unemployed for this title, and is immediately eligible if the individual also meets the requirements of § 99.38.

(ii) If the individual is no longer receiving welfare payments, that individual must meet the standard eligibility criteria for paragraph (b)(1) of this section.

(c) The following requirements are applicable in the selection process of participants for all jobs and activities filled under Title VI:

(1) The selection of participants shall be made in accordance with the provisons of § 96.25 of this subtitle.

(2) A person who obtains permanent, full-time unsubsidized employment after application shall no longer be considered eligible for Title VI, unless even with such full-time employment, an applicant pursuant to § 99.40(b)(2) still meets the requirements of paragraph (b)(1) of this section.

(3) Citizenship may not be used as a criterion to prevent persons from participating in a program under Title VI. However, program participation shall be limited to nationals of the United States and aliens who have been accorded the privilege of residing in the United States as lawful permanent residents or refugees, including refugees who are parolees.

(4) While the selection of eligible full time students for participation in programs funded under Title VI is not prohibited, prime sponsors should exercise caution in providing for such participation and should provide for such participation only in accordance with these regulations. Prior to providing for such participation, prime sponsors should give special consideration to those persons most severely disadvantaged in terms of the length of time they have been unemployed and their prospects for finding employment without assistance under Title VI.

(5) A participant in a Title VI program may change jobs within a particular prime sponsor's or program agent's jurisdiction without reestablishing eligibility pursuant to paragraphs (a) or (b) of this section, but may not be employed in a job or activity for any other prime sponsor or program agent without again establishing eligibility pursuant to paragraphs (a) or (b) of this section.

(6) The provisions of §§ 96.28 and 96.30, special consideration for most severely disadvantaged persons and groups to be provided special consideration, shall apply to programs funded under Title VI.

(7) The significant segments of a prime sponsor's population shall be served on an equitable basis, as provided in § 96.29 of this subtitle. In selecting individuals eligible pursuant to paragraph (a) of this section, the requirements of paragraph (a)(3) of this section are in addition to serving significant segments equitably.

§ 99.43 Verification of participant eligibility.

(a) A prime sponsor is responsible for assuring the eligibility of all participants under Title VI. The eligibility requirements of subdivisions (i), (ii), (iii), and (iv) of § 99.42(a)(1) are verifiable. Prime sponsors shall be liable for any payments made to participants determined ineligible during program audits or reviews or otherwise. Decisions on whether to verify eligibility and on the method of verification rest with the prime sponsor except as provided in paragraphs (b) and (c)(3) of this section.

(b) To facilitate the rapid implementation of this program, the prime sponsor may enroll without prior verification, applicants who attest to their eligibility. Within 60 days of these participants' enrollment, the prime sponsor shall obtain written verification of their eligibility from the State employment security agencies (SESA's) and/or welfare agencies. Participants who are found to be ineligible shall be terminated immediately and the prime sponsor shall not be liable for wages and benefits paid to these participants prior to the receipt of the written verification.

(c) In order to protect their liability, prime sponsors are encouraged to develop arrangements and procedures for the verification of participants as follows:

(1) Arrangements, including cooperative agreements, with SESA's for the verification of individuals whose applications indicate that they qualify pur-

suant to paragraphs (i), (ii), and (iii) of § 99.42(a)(1); and

(2) Arrangements with public welfare agencies for the verification of individuals whose applications indicate that they qualify as an AFDC recipient (§ 99.42(a(1)(iv)).

(3) To the extent that there are arrangements pursuant to paragraphs (c)(1) and (2) of this section and these arrangements are described in an approved grant, the prime sponsor shall not be responsible for verifying those eligibility requirements covered in those arrangements, nor shall it be liable for any costs resulting from its reliance on such arrangements.

(d) As unemployment compensation recipients approach their 15th week or their exhaustion status, SESAs will be informing them of their possible eligibility for Title VI programs. Prime sponsors shall work with the SESA in the development of arrangements for informing these individuals of their possible eligibility for available opportunities.

§ 99.44 Special considerations on selection.

(a) In filling teaching positions in elementary and secondary schools, each prime sponsor shall give special consideration to eligible unemployed persons with previous teaching experience who are certified by the State in which that prime sponsor is located (sec. 602(f)).

(b) In providing public service jobs and determining hours of work for individuals eligible pursuant to § 99.40 (a)(2) and (b)(1), each prime sponsor shall take into consideration the household support obligations of the individuals and shall give special consideration to such alternative working arrangements as flexible hours of work, shared time and part-time jobs, for participants with particular needs, e.g., parents of young children, older persons, and handicapped individuals (sec. 608(d)).

§ 99.45 Administrative staff selection and compensation.

(a) The Title VI administrative staff shall be selected and compensated in accordance with the provisions of § 96.35 of this subtitle.

(b) When administrative funds are utilized to pay the wages of supervisory personnel for projects, the promotional rights of existing employees to fill the supervisory positions shall be protected.

Subpart E—Administrative Provisions

§ 99.70 General.

This subpart contains regulations on the administration of grants under Title VI of the Act. The regulations in this subpart reference the sections of Part 98 of this subtitle which apply to Title VI grants.

§ 99.71 Payments, financial management systems and audit.

Sections 98.2 through 98.6 of this subtitle relating to payments, financial management systems and audits apply to grants under Title VI of the Act (secs. 702(b), 713).

§ 99.72 Reporting requirements.

(a) Section 98.7 of this subtitle shall apply to Title VI programs (secs. 702(12), 713).

(b) Section 98.8 of this subtitle requiring submission of the Program Status Report and Monthly Report shall apply to programs under Title VI. To assure the effective implementation of the program and the least disruption during its phase-down, the Secretary may require the prime sponsor to submit information on a more frequent basis.

(c) Section 98.9 of this subtitle requiring submission of a Quarterly Summary of Participant Characteristics shall apply to programs under Title VI.

(d) Section 98.10 of this subtitle requiring submission of a Report of Federal Cash Transactions shall apply to programs under Title VI.

§ 99.73 Reallocation of funds.

(a) Irrespective of requirements under § 98.11 of this subtitle, the RA may make such reallocation, as he deems appropriate, of any amount of any allocation under Title VI of the Act to the extent that he determines that an eligible applicant will not be able to use such amount within a reasonable period of time.

(b) When the RA determines that a reallocation is appropriate, he shall give the grantee and the appropriate Governor 30-day notice of the proposed action to remove funds from the grant. Such notice shall include the specific reasons for the action being taken.

(c) The grantee and the Governor will be invited to submit comments on a proposed reallocation of funds. These comments shall be submitted to the RA within 30 days from the date of the notice. The RA shall notify the Governor and affected prime sponsors on any decision to reallocate funds and shall have any such decision published in the FEDERAL REGISTER.

(d) The procedures set out in this section are in lieu of any other procedure which might otherwise be applicable under § 98.40, et seq. of this subtitle.

(e) Any reallocation of funds shall be to an alternate eligible applicant to serve the same area or to eligible applicants to serve other areas. In reallocating such funds to serve other areas, priority shall be given first to eligible applicants within the same State and then to eligible applicants within other States, taking into consideration the number of eligible unemployed individuals in those areas (sec. 606).

§ 99.74 Allowable Federal costs.

(a) Section 98.12 of this subtitle concerning allowable Federal costs shall apply to Title VI grants. In addition, the 15 percent administrative funds may be used to purchase construction supplies and materials to be used in projects.

§ 99.75 Grantee contracts and subgrants.

Section 98.27 of this title shall apply to Title VI grants, except that contracts and subgrants may not extend more than 6 months beyond the term of the grant.

§ 99.76 Allocations of allowable costs among program activities.

Section 98.13 of this subtitle shall apply to Title VI grants.

§ 99.77 Basic personnel standards for eligible applicants.

(a) Section 98.14 of this title shall apply to Title VI grants (sec. 703(14)).

(b) The basic personnel standards, as set forth in § 98.14 of this subtitle, shall apply only to an eligible applicant's staff and not to program participants. However, in filing public service jobs funded under Title VI of the Act, eligible applicants shall insure that applicable personnel procedures and collective bargaining agreements have been met.

§ 99.78 Adjustments in payments.

Section 98.15 of this subtitle shall apply to Title VI grants (sec. 702(b)).

§ 99.79 Termination of grant closeout procedures.

Sections 98.16 and 98.17 of this subtitle shall apply to Title VI grants (sec. 702(b)).

§ 99.80 Retention of records.

Section 98.18 of this subtitle shall apply to Title VI grants (sec. 703(a)(12)).

§ 99.81 Program income and procurement standards.

Sections 98.19 and 98.20 of this subtitle shall apply to Title VI grants.

§ 99.82 Nondiscrimination, equal employment opportunities, nepotism and restriction on political activities.

(a) Sections 98.21, 98.22 and 98.23 of this subtitle apply to Title VI programs (secs. 703(1), 710 and 172);

(b) Sections 98.24, 98.25, 98.26, 98.28, and 98.29 of this subtitle relating to general benefits and working conditions, retirement programs, procedures for resolving issues, nonfederal status of participants, and Davis-Bacon Act provisions, shall apply to Title VI programs.

§ 99.83 Assessment and evaluation.

Sections 98.30 through 98.34 shall apply to Title VI grants (sec. 703(14)).

§ 99.84 Hearings and judicial review.

Sections 98.40 through 98.49 of this subtitle shall apply to Title VI grants (except as otherwise provided in this part).

Subpart F—Special Conditions for Grants to Indian Tribes and Alaskan Native Villages

§ 99.90 General.

This subpart contains special conditions for grants under Title VI of the Act to Indian tribes on Federal and State reservations, recognized tribes in the State of Oklahoma, and Alaska Native Villages in the State of Alaska. To the extent that any provisions of this subpart differ from any other provision of this part, the provisions of this subpart shall govern. Otherwise, the requirements of this part 99 apply to programs under this subpart.

§ 99.91 Grant responsibility.

The Division of Indian and Native American Programs in the Office of National Programs shall have full responsibility for all matters pertaining to funds allocated to eligible applicants as defined under § 99.90 above. For purposes of this subpart, all references to RA in this Part 99 shall be read as Director, Division of Indian and Native American Programs.

§ 99.92 Distribution of funds.

Funds for use under this subpart shall be not less than 2 percent of all funds appropriated for Title VI programs. Such funds shall be allocated among the designated prime sponsors on the basis of the prime sponsor's Indian and Alaskan Native rate of unemployment compared to the rate of unemployment in all eligible areas. In making such allocations, the Secretary shall use the best data available. Within prime sponsors which are consortia, the Secretary shall allocate funds among the member reservations on the basis of identifiable areas of high unemployment. To the extent feasible, a nonconsortium prime sponsor shall allocate funds within its area on the basis of identifiable areas of high unemployment.

§ 99.93 Eligibility for funds.

Indian tribes on Federal or State reservations, recognized tribes in Oklahoma and Alaskan Native villages shall be eligible for Title VI funds provided they meet the requirements of § 96.42 of this subtitle, except that recognized tribes in Oklahoma and Alaskan Native villages are exempt from the Federal or State reservation requirement.

§ 99.94 Funding of prime sponsors.

(a) A prime sponsor, if necessary, shall update its Preapplication for Federal Assistance (SF-424) to include a request for funding pursuant to Title VI of the Act. An eligible applicant which has not previously submitted a Preapplication shall comply with § 97.111 of this subtitle.

(b) A consortium, if necessary, shall amend its consortium agreement to insure that it covers activities funded under Title VI of the Act.

(c) Funds made available pursuant to Title VI shall be included in existing Fiscal Year 1977 grants via a modification if appropriate. If new grants are executed, they shall be for a period not to exceed 12 months.

(d) The Title VI modification of the new grant shall consist of the Employment Plan and the Grant Sheet. New grants shall also include appropriate Assurances and Certifications. The Employment Plan shall consist of:

(1) A full narrative description of the program;

(2) A program planning summary;

(3) A budget information summary;

(4) An occupational summary;

(5) A program summary; and

(6) A monthly plan.

§ 99.95 Participant eligibility.

Indian and Alaskan Natives who meet the eligibility and residency requirements of this part shall be eligible to participate in programs funded under Title VI.

§ 99.96 Comments and publication procedures relating to submission of application for funding.

Each eligible applicant shall provide an opportunity for comment on its Title VI plan as set out in § 97.115 of this subtitle.

§ 99.97 Planning process; advisory councils.

Eligible applicants shall utilize in their planning process the services of their planning councils authorized under § 97.113 of this subtitle. In addition, the provision of § 99.41 shall apply to the project application approval process.

§ 99.98 Travel requirements.

Travel regulations for grantees under this subpart shall be those at § 97.161(f)(7) of this subtitle.

§ 99.99 Nepotism and conflict of interest.

(a) No prime sponsor, subgrantee or contractor shall hire, or permit the hiring of, any person in a staff position, nor shall they accept any person as a participant, if a member of the person's immediate family is employed in an administrative capacity by the prime sponsor, subgrantee or contractor. For the purposes of this section, the term "immediate family" means wife, husband, son, daughter, mother, father, brother, and sister. The term "staff position" includes all positions such as instructors, counselors, administrators, and suppliers of training and services. The term "employed in an administrative capacity" includes those persons who have overall administrative responsibility for a program, including: All elected and appointed officials who have any responsibility for the obtaining of and/or approval of any grant funded under this subpart as well as other officials who have any influence or control over the administration of the program, such as the project director, deputy director and unit chiefs; and persons who have selection, hiring, placement, or supervisory responsibilities for public service employment participants. The Secretary may waive this requirement if adequate justification is received that no other persons within the subgrantee's jurisdiction are eligible and available for participation or employment by the prime sponsor.

(b) Where a tribal policy regarding nepotism exists which is more restrictive than this policy, the prime sponsor shall follow the tribal rule.

(c) Each prime sponsor shall establish safeguards to prohibit employees under the grant, board members, or tribal council members from using their positions for private gain for themselves or others with whom they have family, business or other ties.

§ 99.100 Non-discrimination; political activities.

Sections 99.21 and 98.23 shall be applicable to programs under this subpart except to the extent that those provisions conflict with 42 U.S.C. 2000e(b).

§ 99.101 Subgrants.

In addition to the requirements concerning subgrants, Indian tribes may require that subgrantees agree, to the maximum extent feasible, to hire qualified Indians in accordance with 42 U.S.C. 2000e-2(i).

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
List of CFR Sections Affected

Appendix—Postponed Regulations

Subtitle A—Office of the Secretary of Labor

The President's Memorandum of January 29, 1981 (46 FR 11227, Feb. 6, 1981), directed Federal agencies to postpone for sixty days from January 29, 1981, the effective date of all regulations that they had promulgated in final form and had scheduled to become effective during such sixty day period.

At the expiration of the sixty day period, certain of these regulations were withdrawn or further postponed. Where a regulation has been postponed to a date beyond the revision date of the individual CFR volume in which it would be codified, the Office of the Federal Register has elected to publish the text of the postponed regulation in this appendix to the volume pending further action by the issuing agency.

PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

Note: Part 4 was revised at 46 FR 4337, Jan. 16, 1981, effective February 17, 1981. In accordance with the President's Memorandum of January 29, 1981, the effective date was postponed to April 17, 1981, at 46 FR 11971, Feb. 12, 1981 and subsequently postponed to the dates listed below.

May 1, 1981 (46 FR 18973, Mar. 27, 1981)

July 1, 1981 (46 FR 23739, Apr. 28, 1981)

August 1, 1981 (46 FR 33515, June 30, 1981)

August 15, 1981 (46 FR 36140, July 14, 1981)

Indefinitely (46 FR 41045, Aug. 14, 1981)

In order to determine the efective date of Part 4 after the revision date of this volume, the user must consult the daily Federal Register.

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AUTHORITY: 41 U.S.C. 351, et seq., 79 Stat. 1034, as amended in 86 Stat. 789, 90 Stat. 2358; 41 U.S.C. 38 and 39; and 5 U.S.C. 301, unless otherwise noted.

SOURCE: 46 FR 4337, Jan. 16, 1981, unless otherwise noted.

Subpart A—Service Contract Labor Standards Provisions and Procedures

§ 4.1 Purpose and scope.

This part contains the Department of Labor's rules relating to the administration of the McNamara-O'Hara Service Contract Act of 1965, as amended, referred to hereinafter as the Act. Rules of practice for administrative proceedings under the Act and for the review of wage determinations are contained in Part 6 of this chapter. See Part 1925 of this title for the safety and health standards applicable under the Service Contract Act.

§ 4.1a Definitions and use of terms.

As used in this part, unless otherwise indicated by the context—

(a) "Act," "Service Contract Act," McNamara-O'Hara Act, or "Service Contract Act of 1965" shall mean the Service Contract Act of 1965 as amended by Public Law 92-473, 86 Stat. 789, effective October 9, 1972, Pub. L. 93-57, 87 Stat. 140, effective July 6, 1973, and Pub. L. 94-489, 90 Stat. 2358, effective October 13, 1976 and any subsequent amendments thereto.

(b) "Secretary" includes the Secretary of Labor, the Assistant Secretary of Labor for Employment Standards, and their authorized representatives.

(c) "Administrator" means the Administrator of the Wage and Hour Division, or the authorized representative as set forth in this part. In the absence of the Wage-Hour Administrator, the Deputy Administrator of the Wage and Hour Division is designated to act for the Administrator under this part. Except as otherwise provided in this part, the Assistant Administrator for Government Contract Wage Standards is the authorized representative of the Administrator for the performance of functions relating to the making of wage determinations and the enforcement of the Service Contract Act of 1965, as amended, and this part.

(d) "Office of Government Contract Wage Standards" or "OGCWS" means the organizational unit in the Wage and Hour Division, Employment Standards Administration, to which is assigned the performance of functions of the Secretary under the Service Contract Act of 1965 as amended.

(e) "Contract" includes any contract subject wholly or in part to provisions of the Service Contract Act of 1965 as amended, and any bid specification or subcontract of any tier thereunder. (See §§ 4.107–4.134.)

(f) "Contractor" includes a subcontractor whose subcontract is subject to provisions of the Act. Also, the term "employer" means, and is used interchangeably with, the terms "contractor" and "subcontractor" in various sections in this part. The U.S. Government, its agencies, and instrumentalities are not contractors, subcontractors, employers or joint employers for purposes of compliance with the provisions of the Act.

(g) "Affiliate" or "affiliated person" includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with a contractor or subcontractor as a parent, subsidiary, or otherwise; and an officer or agent of such corporation. An affiliation is also deemed to exist where, directly or indirectly, one business concern or individual controls or has the power to control the other or where a third party controls or has the power to control both.

(h) "Wage determination" includes any determination of minimum wage rates or fringe benefits made pursuant to the provisions of sections 2(a) and 4(c) of the Act for application to the employment in a locality of any class or classes of service employees in the performance of any contract in excess of $2,500 which is subject to the provisions of the Service Contract Act of 1965.

§ 4.1b Payment of minimum compensation based on collectively bargained wage rates and fringe benefits applicable to employment under predecessor contract.

(a) Section 4(c) of the Service Contract Act of 1965 as amended provides special minimum wage and fringe benefit requirements applicable to every contractor and subcontractor under a contract which succeeds a contract subject to the Act and under which substantially the same services as under the predecessor contract are furnished for the same location. Section 4(c) provides that no such contractor or subcontractor shall pay any service employee employed on the contract work less than the wages and fringe benefits provided for in a collective bargaining agreement as a result of arms-length negotiations, to which such service employees would have been entitled if they were employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for in such collective bargaining agreement. If, however, the Secretary finds after a hearing in accordance with the regulations set forth in § 4.10 of this subpart and Part 6 of this title that in any of the foregoing circumstances such wages and fringe benefits are substantially at variance with those which prevail for service of a character similar in the locality, those wages and/or fringe benefits in such collective bargaining agreement which are found to be substantially at variance shall not apply, and a new wage determination shall be issued.

If the contract has been awarded and work begun prior to a finding that the wages and/or fringe benefits in a collective bargaining agreement are substantially at variance with those prevailing in the locality, the payment obligation of such contractor or subcontractor with respect to the wages and fringe benefits contained in the new wage determination shall be applicable as of the date of the Administrative Law Judges' decision. (See also § 4.163(c).)

(b) Pursuant to section 4(b) of the Act, the application of section 4(c) is made subject to the following variation in the circumstances and under the conditions described: The wage rates and fringe benefits provided for in any collective bargaining agreement applicable to the performance of work under the predecessor contract which is consummated during the period of performance of such contract shall not be effective for purposes of the successor contract under the provisions of section 4(c) of the Act or under any wage determination implementing such section issued pursuant to section 2(a) of the Act, if—

(1) In the case of a successor contract for which bids have been invited by formal advertising, notice of the terms of such new or changed collective bargaining agreement is received by the contracting agency less than 10 days before the date set for opening of bids, provided that the contracting agency finds that there is not reasonable time still available to notify bidders; or

(2) Notice of the terms of a new or changed collective bargaining agreement is received by the agency after award of a successor contract to be entered into pursuant to negotiations or as a result of the execution of a renewal option or an extension of the initial contract term, provided that the contract start of performance is within 30 days of such award or renewal option or extension. If the contract does not specify a start of performance date

which is within 30 days from the award, and/or performance of such procurement does not commence within this 30-day period, any notice of the terms of a new or changed collective bargaining agreement received by the agency not less than 10 days before commencement of the contract will be effective for purposes of the successor contract under section 4(c); and

(3) The limitations in paragraph (b) (1) or (2) of this section shall apply only if the contracting officer has given both the incumbent (predecessor) contractor and his employees' collective bargaining representative written notification at least 30 days in advance of all applicable estimated procurement dates, including issue of bid solicitation, bid opening, date of award, commencement of negotiations, receipt of proposals, or the commencement date of a contract resulting from a negotiation, option, or extension, as the case may be.

§ 4.2 Payment of minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 under all service contracts.

Section 2(b)(1) of the Service Contract Act of 1965 provides in effect that, regardless of contract amount, no contractor or subcontractor performing work under any Federal contract the principal purpose of which is to furnish services through the use of service employees shall pay any of his employees engaged in such work less than the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended ($2.65 per hour beginning January 1, 1978, $2.90 per hour beginning January 1, 1979, $3.10 per hour beginning January 1, 1980, and $3.35 per hour after December 31, 1980).

§ 4.3 Wage determinations.

(a) The minimum monetary wages and fringe benefits for service employees which the Act requires to be specified in contracts and bid specifications subject to section 2(a) thereof will be set forth in wage determinations issued by the Administrator. Wage determinations shall be issued as soon as administratively feasible for all contracts subject to section 2(a) of the Act, and will be issued for all contracts entered into under which more than 5 service employees are to be employed.

(b) Such wage determinations will set forth for the various classes of service employees to be employed in furnishing services under such contracts in the appropriate localities, minimum monetary wage rates to be paid and minimum fringe benefits to be furnished them during the periods when they are engaged in the performance of such contracts, including, where appropriate under the Act, provisons for adjustments in such minimum rates and benefits to be placed in effect under such contracts at specified future times. The wage rates and fringe benefits set forth in such wage determinations shall be determined in accordance with the provisions of sections 2(a)(1), (2), and (5), 4(c) and 4(d) of the Act from those prevailing in the locality for such employees, with due consideration of the rates that would be paid for direct Federal employment of any classes of such employees whose wages, if federally employed, would be determined as provided in 5 U.S.C. 5341 or 5 U.S.C. 5332, or from pertinent collective bargaining agreements with respect to the implementation of section 4(c). The wage rates and fringe benefits so determined for any class of service employees to be engaged in furnishing covered contract services in a locality shall be made applicable by contract to all service employees of such class employed to perform such services in the locality under any contract subject to section 2(a) of the Act which is entered into thereafter and before such determination has been rendered obsolete by a withdrawal, modification, or supersedure.

(c) Wage determinations will be available for public inspection during business hours at the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and copies will be made available on request at Regional Offices of the Wage and Hour Division.

§ 4.4 Notice of intention to make a service contract.

(a) For any contract exceeding $2,500 which may be subject to the Act, the contracting agency shall file with the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, Department of Labor, its notice of intention to make a service contract. With respect to recurring or known requirements, such notices shall be filed not less than 60 days (nor more than 120 days, except with the approval of the Wage and Hour Division) prior to (1) any invitation for bids, (2) request for proposals, (3) commencement of negotiations, (4) exercise of option or contract extension, (5) annual anniversary date of a multi-year contract subject to annual fiscal appropriations of the Congress, or (6) each bi-annual anniversary date of a multi-year contract not subject to such annual appropriations, if so authorized by the Wage and Hour Division. (See § 4.4(d).) Notices with regard to solicitations where such planning is not feasible shall be submitted as soon as possible, but not later than 30 days prior to the above contracting actions. Such notice shall be submitted on Standard Form 98, Notice of Intention to Make a Service Contract, and Standard Form 98-A or a statement containing the information in paragraph (b) of this section and shall be completed in accordance with the instruction provided and shall be supplemented by the information required under paragraphs (c) and (d) of this section. Supplies of Standard Forms 98 and 98-A are available in all GSA supply depots under stock numbers 7540-926-8972 and 7540-118-1008, respectively. If there exists any question or doubt as to the possible application of the Act to a particular procurement, the contracting agency shall submit such question in a timely manner to the Administrator for determination.

(b) The contracting agency shall file with its Notice of Intention to Make a Service Contract (SF-98) either a Standard Form 98-A or a statement in writing, containing the following information concerning the service employees expected by the agency to be employed by the contractor and any subcontractors in performing the contract:

(1) The number of such employees of all classes, or a statement indicating whether such number will or will not exceed 5, the number for which the inclusion of a wage determination in the contract is mandatory under the provisions of section 10 of the Act as set forth in § 4.3(a); and

(2) A listing of those classes of service employees expected to be employed under the contract which, if employed by the agency, would be subject to the wage provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332, together with a specification of the rates of wages and fringe benefits that would be paid by the Government to employees of each such class if such statute were applicable to them. (Under section 2(a)(5) of the Act and § 4.6 the inclusion of such a statement in the service contract is also required.)

(c) If the services to be furnished under the proposed contract will be substantially the same as services being furnished for the same location by an incumbent contractor whose contract the proposed contract will succeed, and if such incumbent contractor is furnishing such services through the use of service employees whose wage rates and fringe benefits are the subject of one or more collective bargaining agreements, the contracting agency shall file with its Notice of Intention to Make a Service Contract (SF-98) a copy of each such collective bargaining agreement together with any related documents specifying the wage rates and fringe benefits currently or prospectively payable under such agreement. If such services are being furnished for more than one location and the collectively bargained wage rates and fringe benefits are different for different locations or do not apply for one or more locations, the agency shall identify the locations to which such agreements have application. If the collective bargaining agreement does not apply to all service employees under the contract, the agency shall identify the employees and/or work subject to the collective bargaining agreement. In the event that the agency has reason to believe that any such collective bargaining agreement was not entered into as a result of arm's-length negotiations, a full statement of the facts so indicating shall be transmitted with the copy of such agreement. See § 4.11. If the agency has information indicating that any such collectively bargained wage rates and fringe benefits are substantially at variance with those prevailing for services of a similar character in the locality, the agency shall so advise the Office of Government Contract Wage Standards and, if it believes a hearing thereon pursuant to section 4(c) of the Act is warranted, shall file its request for such hearing pursuant to § 4.10 at the time of filing the Notice of Intention to Make a Service Contract (Form SF-98).

(d) If the proposed contract is for a multi-year period subject to other than annual appropriations, the contracting agency shall file with its Standard Form 98 a statement in writing concerning the type of funding and the contemplated term of the proposed contract. Unless otherwise advised by the Wage and Hour Division that a Standard Form 98 must be filed on the annual anniversary date, a new Standard Form 98 shall be submitted on each bi-annual and anniversary date of the proposed multi-year contract in the event its term is for a period in excess of two years.

(e) Any Standard Form 98 submitted by a contracting agency without the information required under paragraphs (b), (c), or (d) of this section will be returned to the agency for further action.

(f) If exceptional circumstances prevent the filing of the notice of intention and supplemental information required by this section on a date at least 60 days (or 30 days in the case of unplanned procurements) prior to any invitation for bids, request for proposals, or commencement of negotiations, the notice shall be submitted to the Office of Government Contract Wage Standards as soon as practicable with a detailed explanation of the special circumstances which prevented timely submission. In the event the proposed contract involves performance by more than 5 service employees and an emergency situation requires an immediate award, the contracting agency shall contact the Office of Government Contract Wage Standards, Wage and Hour Division, by telephone for guidance prior to any such award. In no event may a contract subject to the act on which more than 5 service employees are contemplated to be employed be awarded without an appropriate wage determination. (Section 10 of the Act.)

(g) If any invitation for bids, request for proposals, bid opening, or commencement of negotiations for a proposed contract for which a wage determination was provided in response to a Standard Form 98 has been delayed, for whatever reason, more than 60 days from the date of such procurement action as indicated on the submitted Standard Form 98, the contracting agency shall contact the Office of Government Contract Wage Standards, Wage and Hour Division, for the purpose of determining whether the wage determination issued pursuant to the initial submission is still current. Any revision of a wage determination received by the contracting agency as a result of such communication or upon discovery by the Department of Labor of a delay, shall supersede and replace the earlier response as the wage determination applicable to such procurement, subject to the time frames set forth in § 4.5(a)(2).

[46 FR 4337, Jan. 16, 1981; 46 FR 11284, Feb. 2, 1981]

§ 4.5 Contract specification of determined minimum wages and fringe benefits.

(a) Any contract in excess of $2,500 shall contain an attachment specifying the minimum wages and fringe benefits for service employees to be employed thereunder, as determined in the applicable currently effective wage determination, including the applicable wage determination contained in any document referred to in paragraphs (a) (1) or (2) of this section;

(1) Any communication from the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, Department of Labor, responsive to the notice required by § 4.4; or

(2) Any revision of a wage determination issued prior to the award of the contract or contracts which specifies minimum wage rates or fringe benefits for classes of service employees whose wages or fringe benefits were not previously covered by wage determinations, or which changes previously determined minimum wage rates and fringe benefits for service employees employed on covered contracts in the locality. However, revisions received by the Federal agency later than 10 days before the opening of bids, in the case of contracts entered into pursuant to competitive bidding procedures, shall not be effective if the Federal agency finds that there is not a reasonable time still available to notify bidders of the revision. In the case of procurements entered into pursuant to negotiations (or in the case of the execution of an option or an extension of the initial contract term), revisions received by the agency after award (or execution of an option or extension of term, as the case may be) of the contract shall not be effective *provided* that the contract start of performance is within 30 days of such award (or execution of an option or extension of term). If the contract does not specify a start of performance date which is within 30 days from the award, and/or if performance of such procurement does not commence within this 30-day period, the Department of Labor shall be notified and any notice of a revision received by the agency not less than 10 days before commencement of the contract shall be effective. In situations arising under section 4(c) of the Act, the provisions in § 4.1b(b) apply.

(b)(1) The following exemption from the compensation requirements of section 2(a) of the Act applies, subject to the limitations set forth in paragraphs (b) (2), (3), and (4) of this section: To avoid serious impairment of the conduct of Government business it has been found necessary and proper to provide exemption from the determined wage and fringe benefits section of the Act (section 2(a) (1), (2)) but not the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (section 2(b) of this Act), of contracts under which five or less service employees are to be employed, and for which no such wage or fringe benefit determination has been issued;

(2) The exemption provided in paragraph (b)(1) of this section, which was adopted pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, does not extend to undetermined wages or fringe benefits in contracts for which one or more, but not all, classes of service employees are the subject of an applicable wage determination. The procedure for determination of wage rates and fringe benefits for any classes of service employees engaged in performing such contracts whose wages and fringe benefits are not specified in the applicable wage determination is set forth in § 4.6(b).

(3) The exemption provided in paragraph (b)(1) of this section does not exempt any contract from the application of the provisions of section 4(c) of the Act as amended, concerning successor contracts.

(c)(1) If the notice of intention required by § 4.4 is not filed with the required supporting documents within the time provided in such section, the contracting agency shall, through the exercise of any and all of its power and authority that may be needed (including, where necessary, its authority to negotiate, its authority to pay any necessary additional costs, and its authority under any provision of the contract authorizing changes), include in the contract any wage determinations communicated to it by the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, within 30 days of the receipt of such wage determination(s).

(2) Where the Department of Labor discovers and determines, whether before or subsequent to a contract award, that a contracting agency made an erroneous determination that the Service Contract Act did not apply to a particular procurement and/or failed to include an appropriate wage determination in a covered contract, the contracting agency, within 30 days of notification by the Department of Labor, shall *include in the contract* the stipulations contained in § 4.6 and any applicable wage determination

issued by the Administrator or his authorized representative through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation, and termination). (*G. L. Christian & Associates* v. *U.S.*, 312 F. 2d 418 (Ct. Cl. 1963), rearg. denied 320 F. 2d 345, cert. denied 375 U.S. 954; (53 Comp. Gen. 412, (1973); *Curtiss-Wright Corp.* v. *McLucas*, 381 F. Supp. 657 (D NJ 1974); *Marine Engineers Beneficial Assn., District 2* v. *Military Sealift Command*, 86 CCH Labor Cases ¶33,782 (D DC 1979); *Brinks, Inc.* v. *Board of Governors of the Federal Reserve System*, 466 F. Supp. 112 (D DC 1979), 466 F. Supp. 116 (D DC 1979). (See also 32 CFR 1-403.)

(d) In cases where the contracting agency has filed its SF-98 within the time limits discussed in § 4.4(a) and has not received a response from the Department of Labor, the contracting agency shall, with respect to any contract for which section 10 of the Act and § 4.3 of this part mandate the inclusion of an applicable wage determination, contact the Office of Government Contract Wage Standards, Wage and Hour Division by telephone for guidance.

§ 4.6 Labor standards clauses for Federal service contracts exceeding $2,500.

The clauses set forth in the following paragraphs shall be included in full by the contracting agency in every contract (and any bid specification therefor) entered into by the United States or the District of Columbia, in excess of $2,500, or in an indefinite amount, the principal purpose of which is to furnish services through the use of service employees:

(a) Service Contract Act of 1965, as amended: This contract, is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR Part 4).

(b)(1) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract. Unless specified otherwise in the wage determination, the contractor, where relevant, must consider an employee's length of service with the contractor or with the predecessor contractor(s) on the predecessor contract, if any, in determining the employee's wage and fringe benefit entitlements.

(2)(i) If there is such a wage determination attached to this contract, the contracting officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract, be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined by bona fide agreement of the interested parties, who shall be deemed to be the contracting officer, the contractor, and any authorized representative of the unlisted class of employees or, where there is no authorized representative, the employees in the unlisted class who will perform on the contract.

(ii) Such conforming procedure shall be initiated by the contractor at the time of the contract commencement date, or prior to the performance of contract work by such unlisted class of employee if a need for an additional class(es) arises, and shall be concluded no later than 30 days after such unlisted class of employees performs any contract work. A written report of the proposed conforming action, including evidence in writing of the agreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be promptly submitted by the contractor to the contracting officer who shall review this action, and if he or she agrees, shall promptly submit a report of the action to the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Office of Government Contract Wage Standards will approve or disapprove the action within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary. If the conforming procedure cannot be concluded within the 30-day time period, the contracting officer shall submit an explanation of the special circumstances which prevent a timely agreement to the Office of Government Contract Wage Standards together with a request for additional time for resolution of the matter.

(iii) If the parties do not reach an agreement or acknowledge disagreement within this 30-day period on a proper classification which is, in fact, conformable, the contracting officer shall promptly submit the question, together with his or her recommendations and all pertinent information, including the positions of employees if in disagreement, to the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, of the Department of Labor for final determination. The Office of Government Contract Wage Standards will render a determination within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.

(iv) The process of establishing wage rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(v) Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Office of Government Contract Wage Standards retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(vii) Failure by the contractor to comply with its responsibilities in sections (b)(2) (i) through (vi) of this section shall also be a violation of the Act and this contract. Upon discovery of such violation, the Office of Government Contract Wage Standards shall then make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(viii) Any agreement reached by the interested parties will not be considered a bona fide agreement unless the affected employees in the unlisted classification(s) have been provided with a full explanation of the conformance procedures and the basis for arriving at the proposed conformed classification (and wage rate and/or fringe benefits). The affected employees shall be afforded an opportunity to agree or disagree without threat of job reprisal. Upon final determination of this action by the Office of Government Contract Wage Standards, each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(3) If, as authorized pursuant to section 4(d) of the Service Contract Act

of 1965 as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(c) The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR Part 4, and not otherwise.

(d)(1) In the absence of a minimum wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(2) If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of § 4.1b(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative determines, after a hearing as provided in § 4.11 of 29 CFR Part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, or finds, after a hearing as provided in § 4.10 of 29 CFR Part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality. Where the Secretary finds after a hearing in accordance with the review procedures provided in 29 CFR 4.10 and Part 6 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrative Law Judge, or the Secretary, as the case may be irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract. 53 Comp. Gen. 401 (1973).

(e) The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(f) The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(g) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work records containing the information specified in paragraphs (g)(1) through (5) of this section for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor:

(1) Name and address and social security number of each employee.

(2) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.

(3) The number of daily and weekly hours so worked by each employee.

(4) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(5) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to the labor standards clause in paragraph (b) of this section. A copy of the report required by the clause in paragraph (b)(2)(ii) of this section shall be deemed to be such a list.

(6) Any list of the predecessor contractor's employees which had been furnished to the contractor pursuant to § 4.6(l)(2).

(7) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(8) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of the Department of Labor and notification of the contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(h) The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semimonthly.

(i) The contracting officer shall withhold or cause to be withheld from the Government prime contractor under this or any other Government contract with the prime contractor such sums as an appropriate official of the Department of Labor requests or such sums as the contracting officer decides may be necessary to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(j) The contractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965 in all subcontracts subject to the Act. The term "contractor" as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

(k)(1) As used in these clauses, the term "service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(2) The following statement is included in contracts pursuant to section 2(a)(5) of the Act and is for *informational purposes only:*

The following classes of service employees expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332 and would, if so employed, be paid not less than the following rates, of wages and fringe benefits:

Employee class	Monetary wage-fringe benefits
....	....
....	....
....	....

(l)(1) If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime contractor shall report such fact to the contracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof.

(2) Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a contractor (predecessor) or successor (§ 4.173 of Regulations, 29 CFR Part 4), the incumbent prime contractor shall furnish to the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract.

(m) All rulings and interpretations of the Service Contract Act of 1965, as amended, expressed in Regulations, 29 CFR Part 4 are hereby incorporated by reference in this contract.

(n)(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(o) Notwithstanding any of the clauses in paragraphs (b) through (m) of this section relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(i) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(ii) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(iii) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

(p) Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(q) An employee engaged in an occupation in which he or she customarily and regularly receives more than $30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3 (m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531: Provided, however, *That the amount of such credit* may not exceed $1.24 per hour beginning January 1, 1980, and $1.34 per hour after December 31, 1980. To utilize this proviso:

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit;

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

OMB CONTROL No. 1215-0126, paragraphs (b)(2), (g), and (k). (47 FR 145, Jan. 5, 1982; 47 FR 14706, Apr. 6, 1982)

[46 FR 4337, Jan. 16, 1981; 46 FR 11285, Feb. 6, 1981, as amended at 47 FR 145, Jan. 5, 1982; 47 FR 14706, Apr. 6, 1982]

§ 4.7 Labor standards clause for Federal service contracts not exceeding $2,500.

Every contract with the Federal Government which is not in excess of $2,500 but has as its principal purpose the furnishing of services through the use of service employees shall contain the following clause:

Service Contract Act. Except to the extent that an exemption, variation or tolerance would apply if this were a contract in excess of $2,500, the contractor and any subcontractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. All regulations and interpretations of the Service Contract Act of 1965 expressed in 29 CFR Part 4 are hereby incorporated by reference in this contract.

§ 4.8 Notice of awards.

Whenever an agency of the United States or the District of Columbia awards a contract subject to the Act which may be in excess of $2,500, it shall furnish the Office of Government Contract Wage Standards, Wage and Hour Division, ESA, an original and one copy of Standard Form 99, Notice of Award of Contract. The form shall be completed as follows:

(a) Items 1 through 7 and 12 and 13: Self-explanatory;

(b) Item 8: Enter the notation "Service Contract Act;"

(c) Item 9: Leave blank;

(d) Item 10: (1) Enter the notation "Major Category," and indicate beside this entry the general service area into which the contract falls (e.g., food services, grounds maintenance, computer services, installation or facility support services, custodial-janitorial service, garbage collection, insect and rodent control, laundry and drycleaning services, etc.);

(e) Item 11: Enter the dollar amount of the contract, or the estimated dollar value with the notation "estimated" (if the exact amount is not known). If neither the exact nor the estimated dollar value is known, enter "indefinite," or "not to exceed $——." Supplies of Standard Form 99 are available in all GSA supply depots under stock number 7540-634-4049.

§ 4.9 [Reserved]

§ 4.10 Substantial variance proceedings under section 4(c) of the Act.

(a) *Statutory provision.* Under section 4(c) of the Act, and under corresponding wage determinations made as provided in section 2(a)(1) and (2) of the Act, contractors and subcontractors performing contracts subject to the Act generally are obliged to pay to service employees employed on the contract work wages and fringe benefits not less than those to which they would have been entitled under a collective bargaining agreement if they were employed on like work under a predecessor contract. (See §§ 4.1b, 4.3, 4.6(d)(2).) Section 4(c) of the Act provides, however, that "such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality".

(b) *Prerequisites for hearing.* (1)(i) A request for a hearing under this section may be made by the contracting agency or other person affected or interested, including contractors or prospective contractors and associations of contractors, representatives of employees, and other interested Governmental agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, to the attention of the Office of Government Contract Wage Standards, and shall include the following:

(A) The number of any wage determination at issue, the name of the contracting agency whose contract is involved, and a brief description of the services to be performed under the contract;

(B) A statement regarding the status of the procurement and any estimated procurement dates, such as bid opening, contact award, commencement date of the contract or its follow-up option period;

(C) A statement of the applicant's case, setting forth in detail the reasons why the applicant believes that a substantial variance exists with respect to some or all of the wages and/or fringe benefits, attaching available data concerning wages and/or fringe benefits prevailing in the locality;

(D) Names and addresses (to the extent known) of interested parties.

(ii) If the information in paragraph (b)(1)(i) of this section is not submitted with the request, the Administrator may deny the request or request supplementary information, at his/her discretion. No particular form is prescribed for submission of a request under this section.

(2) No hearing will be provided pursuant to this section and section 4(c) of the Act unless the Administrator determines from information available or submitted with a request for such a hearing that there may be a substantial variance between some or all of the wage rates and/or fringe benefits provided for in a collective bargaining agreement to which the service employees would otherwise be entitled by virtue of the provisions of section 4(c) of the Act, and those which prevail for services of a character similar in the locality.

(3) Pursuant to section 4(b) of the Act, requests for a hearing shall not be considered unless received as specified below, except in those situations where the Administrator determines that extraordinary circumstances exist:

(i) For advertised contracts, prior to ten days before the award of the contract;

(ii) For negotiated contracts and for contracts with provisions extending the initial term by option, prior to the commencement date of the contract or the follow-up option period, as the case may be.

(c) *Referral to the Chief Administrative Law Judge.* When the Administrator determines from the information available or submitted with a request for a hearing that there may be a substantial variance, the Administrator on his own motion or on application of any interested person may by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such a fact finding hearing as may be necessary to render a decision solely on the issue of whether the wages and/or fringe benefits contained in the collective bargaining agreement which was the basis for the wage determination at issue are substantially at variance with those which prevail for services of a character similar in the locality. However, in situations where there is also a question as to whether the collective bargaining agreement was reached as a result of "arm's-length negotiations" (see § 4.11), the referral shall include both issues for resolution in one proceeding. No authority is delegated under this section to hear and/or decide any other issues pertaining to the Service Contract Act. As provided in section 4(a) of the Act, the provisions of §§ 4 and 5 of the Walsh-Healey Public Contracts Act (41 U.S.C. 38, 39) shall be applicable to such proceeding, which shall be conducted in accordance with the procedures set forth at 29 CFR Part 6, Subpart B.

(d) The Administrator shall be an interested party and shall have the opportunity to participate in the proceeding to the degree he/she considers appropriate.

§ 4.11 Arm's length proceedings.

(a) *Statutory provision.* Under Section 4(c) of the Act, the wages and fringe benefits provided in the predecessor contractor's collective bargaining agreement must be reached "as a result of arm's-length negotiations." This provision precludes arrangements by parties to a collective bargaining agreement who, either separately or together, acted with an intent to manipulate, exploit or otherwise take advantage of the wage determination scheme provided for in Sections 2(a) and 4(c) of the Act, or situations where it has been determined by the National Labor Relations Board that "good faith" bargaining did not occur. If the National Labor Relations Board makes such a finding, the Administrator shall issue a decision based on that finding and that decision shall be final and not subject to appeal. A finding as to whether a collective bargaining agreement or particular wages and fringe benefits therein are reached as a result of arm's-length negotiations may be made through investigation, hearing or otherwise pursuant to the Secretary's authority under Section 4(a) of the Act.

(b)(1) A request for a determination under this section may be made by a contracting agency or other person affected or interested, including contractors or prospective contractors and associations of contractors, representatives of employees, and interested Governmental agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, to the attention of the Office of Government Contract Wage Standards. Although no particular form is prescribed for submission of a request under this section, such request shall include the following information:

(i) A statement of the applicant's case setting forth in detail the reasons why the applicant believes that the wages and fringe benefits contained in the collective bargaining agreement were not reached as a result of arm's-length negotiations;

(ii) A statement regarding the status of the procurement and any estimated procurement dates, such as bid opening, contract award, commencement date of the contract or its follow-up option period;

(iii) Names and addresses (to the extent known) of interested parties.

(2) Pursuant to Section 4(b) of the Act, requests for a hearing shall not be considered unless received as specified below except in those situations where the Administrator determines that extraordinary circumstances exist:

(i) For advertised contracts, prior to ten days before the award of the contract;

(ii) For negotiated contracts and for contracts with provisions extending the term by option, prior to the commencement date of the contract or the follow-up option period, as the case may be.

(c)(1) The Administrator, on his/her own motion or after receipt of a request for a determination, may make a finding on the issue of arm's-length negotiations.

(2) If the Administrator determines that there may not have been arm's-length negotiations, but finds that there is insufficient evidence to render a final decision thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with subsection (d).

(3)(i) If the Administrator finds that the collective bargaining agreement or wages and fringe benefits at issue were reached as a result of arm's-length negotiations or that arm's-length negotiations did not take place, the interested parties, including the parties to the collective bargaining agreement, will be notified of the Administrator's findings, which shall include the reasons therefor, and such parties shall be afforded an opportunity to request that a hearing be held to render a decision on the issue of arm's-length negotiations.

(ii) Such parties shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(iii) If no hearing is requested within the time mentioned in paragraph (c)(3)(ii) of this section above, the Administrator's ruling shall be final, and, in the case of a finding that arm's-length negotiations did not take place, a new wage determination will be issued for the contract. If a hearing is requested, the decision of the Administrator shall be inoperative.

(d) *Referral to the Chief Administrative Law Judge.* The Administrator on his/her own motion, under paragraph (c)(2) or upon a request for a hearing under paragraph (c)(3)(ii) where the Administrator determines that material facts are in dispute, shall by order refer the issue to the Chief Administrative Law Judge for designation of an Administrative Law Judge, who shall conduct such hearings as may be necessary to render a decision solely on the issue of arm's-length negotiations. However, in situations where there is also a question as to whether some or all of the collectively bargained wage rates and/or fringe benefits are substantially at variance (see § 4.10), the referral shall include both issues for resolution in one proceeding. As provided in Section 4(a) of the Act, the provisions of Sections 4 and 5 of the Walsh-Healey Public Contracts Act (41 U.S.C. 38, 39) shall be applicable to such proceeding, which shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

(e) *Referral to the Secretary.* When a party requests a hearing under paragraph (c)(3)(ii) and the Administrator determines that no material facts are in dispute, the Administrator shall refer the issue and the record compiled thereon to the Secretary to render a decision solely on the issue of arm's-length negotiations. Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

§ 4.12 Substantial interest proceedings

(a) *Statutory provision.* Under Section 5(a) of the Act, no contract of the United States (or the District of Columbia) shall be awarded to the persons or firms appearing on the list distributed by the Comptroller General giving the names of persons or firms who have been found to have violated the Act until 3 years have elapsed from the date of publication of the list. Section 5(a) further states that "no contract of the United States shall be awarded * * * to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest * * * ." A finding as to whether persons or firms whose names appear on the debarred bidders list have a substantial interest in any other firm, corporation, partnership, or association may be made through investigation, hearing, or otherwise pursuant to the Secretary's authority under Section 4 (a) of the Act.

(b) *Ineligibility.* See § 4.188 of this part for the Secretary's rulings and interpretations with respect to substantial interest.

(c)(1) A request for a determination under this section may be made by any interested party, including contractors or prospective contractors, and associations of contractors, representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, to the attention of the Office of Government Contract Wage Standards.

(2) The request shall include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has a substantial interest in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia. No particular form is prescribed for the submission of a request under this section.

(d)(1) The Administrator, on his/her own motion or after receipt of a request for a determination, may make a finding on the issue of substantial interest.

(2) If the Administrator determines that there may be a substantial interest, but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law

Judge in accordance with subsection (e).

(3) If the Administrator finds that no substantial interest exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.

(4)(i) If the Administrator finds that a substantial interest exists, the person or firm affected will be notified of the Administrator's finding, which shall include the reasons therefor, and such person or firm shall be afforded an opportunity to request that a hearing be held to render a decision on the issue of substantial interest.

(ii) Such person or firm shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(iii) If no hearing is requested within the time mentioned in subparagraph (ii) above, the Administrator's finding shall be final and the Administrator shall so notify the Comptroller General. If a hearing is requested, the decision of the Administrator shall be inoperative unless and until the Administrative Law Judge or the Secretary issues an order that there is a substantial interest.

(e) *Referral to the Chief Administrative Law Judge.* The Administrator on his/her own motion, or upon a request for a hearing where the Administrator determines that relevant facts are in dispute, shall by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of substantial interest. As provided in Section 4(a) of the Act, the provisions of Sections 4 and 5 of the Walsh-Healey Public Contracts Act (41 U.S.C. 38, 39) shall be applicable to such proceedings, which shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

(f) *Referral to the Secretary.* When the person or firm requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Secretary to render a decision solely on the issue of substantial interest. Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

Subpart B—Wage Determination Procedures

§ 4.50 Types of wage and fringe benefit determinations.

The Administrator specifies the minimum monetary wages and fringe benefits to be paid as required under the Act in two types of determinations:

(a) *Prevailing in the Locality.* Determinations that set forth minimum monetary wages and fringe benefits determined to be prevailing for various classes of service employees in the locality (sections 2(a)(1) and 2(a)(2) of the Act) after giving "due consideration" to the rates applicable to such service employees if directly hired by the Federal Government (section 2(a)(5) of the Act); and

(b) *Collective Bargaining Agreement—(Successorship).* Determinations that set forth the wage rates and fringe benefits, including accrued and prospective increases, contained in a collective bargaining agreement applicable to the service employees under the predecessor contract.

§ 4.51 Prevailing in the locality determinations.

(a) *Information considered.* The minimum monetary wages and fringe benefits set forth in determinations of the Secretary are based on all available pertinent information as to wage rates and fringe benefits being paid at the time the determination is made. Such information is most frequently derived from area surveys made by the Bureau of Labor Statistics, U.S. Department of Labor, or other Labor Department personnel. Information may also be obtained from Government contracting officers and from other available sources, including employees and their representatives and employers and their associations. The determinations may be based on the wage rates and fringe benefits contained in collective bargaining agreements where they have been determined to prevail in a locality for specified occupational class(es) of employees.

(b) *Determination of Prevailing Rates.* Where a single rate is paid to a majority (50 percent or more) of the workers in a class of service employees engaged in similar work in a particular locality, that rate is determined to prevail. The wage rates and fringe benefits in a collective bargaining agreement covering 2,001 janitors in a locality, for example, prevail if it is determined that no more than 4,000 workers are engaged in such janitorial work in that locality. In the case of information developed from surveys, statistical measurements of central tendency such as a median (a point in a distribution of wage rates where 50 percent of the surveyed workers receive that or a higher rate and an equal number receive a lesser rate) or the mean (average) are considered reliable indicators of the prevailing rate. Which of these statistical measurements will be applied in a given case will be determined after a careful analysis of the overall survey, separate classification data, patterns existing between survey periods, and the way the separate classification data interrelate. Use of the median is the general rule. However, the mean (average) rate may be used in situations where, after analysis, it is determined that the median is not a reliable indicator. Examples where the mean may be used include situations where:

(1) The number of workers studied for the job classification constitutes a relatively small sample and the computed median results in an actual rate that is paid to few of the studied workers in the class;

(2) Statistical deviation such as a skewed (bimodal or multimodal) frequency distribution biases the median rate due to large concentrations of workers toward either end of the distribution curve and the computed median results in an actual rate that is paid to few of the studied workers in the class; or

(3) The computed median rate distorts historic wage relationships between job levels within a classification family, (i.e., Electronic Technician Classes A, B, and C levels within the Electronic technician classification family), between classifications of different skill levels (i.e., a maintenance electrician as compared with a maintenance carpenter), or, for example, yields a wage movement inconsistent with the pattern shown by the survey overall or with related and/or similarly skilled job classifications.

(c) *Due consideration.* In making wage and fringe benefit determinations, section 2(a)(5) of the Act requires that due consideration be given to the rates that would be paid by the Federal agency to the various classes of service employees if § 5341 or § 5332 of Title 5, United States Code, were applicable to them. Section 5341 refers to the Wage Board or Coordinated Federal Wage System for "blue collar" workers and § 5332 refers to the General Schedule pay system for "white collar" workers. The term "due consideration" implies the exercise of discretion on the basis of the facts and circumstances surrounding each determination, recognizing the legislative objective of narrowing the gap between the wage rates and fringe benefits prevailing for service employees and those established for Federal employees. Each wage determination is based on a survey or other information on the wage rates and fringe benefits being paid in a particular locality and also takes into account those wage rates and fringe benefits which would be paid under Federal pay systems.

§ 4.52 Collective bargaining agreement (successorship) determinations.

Determinations based on the collective bargaining agreement of a predecessor contractor set forth by job classification each provision relating to wages (such as the established straight time hourly or salary rate, cost-of-living allowance, and any shift, hazardous, and other similar pay differentials) and to fringe benefits (such as holiday pay, vacation pay, sick leave pay, life, accidental death, disability, medical, and dental insurance plans, retirement or pension plans, severance pay, supplemental unemployment benefits, saving and thrift plans, stock-option plans, funeral leave, jury/witness leave, or military leave) contained in the predecessor's collective bargaining agreement, as well as conditions governing the payment of such wages and fringe benefits. Accrued wages and fringe benefits and prospective increases therein are also included. Each wage determination is limited in application to a specific contract succeeding a contract which had been performed by a contractor with a collective bargaining agreement, and contains a notice to prospective bidders regarding their obligations under section 4(c) of the Act.

§ 4.53 Locality basis of wage and fringe benefit determinations.

(a) Under section 2(a) of the Act, the Secretary or his authorized representative is given the authority to determine the minimum monetary wages and fringe benefits prevailing for various classes of service employees "in the locality". Although the term "locality" has reference to a geographic area, it has an elastic and variable meaning and contemplates consideration of the existing wage structures which are pertinent to the employment of particular classes of service employees on the varied kinds of service contracts. Because wage structures are extremely varied, there can be no precise single formula which would define the geographic limits of a "locality" that would be relevant or appropriate for the determination of prevailing wage rates and prevailing fringe benefits in all situations under the Act. The locality within which a wage or fringe benefit determination is applicable is, therefore, defined in each such determination upon the basis of all the facts and circumstances pertaining to that determination. Locality is ordinarily limited geographically to a particular county or cluster of counties comprising a metropolitan area. For example, a survey by the Bureau of Labor Statistics of the Baltimore, Maryland Standard Metropolitan Statistical Area includes the counties of Baltimore, Harford, Howard, Anne Arundel, and the City of Baltimore. A wage determination based on such information would define locality as the same geographic area included within the scope of the survey. Locality may also be defined as, for example, a city, a State, or, under rare circumstances, a region, depending on the actual place or places of contract performance, the geographical scope of the data on which the determination was based, the nature of the services being contracted for, and the procurement method used. In addition, in *Southern Packaging & Storage Co. v. United States*, 618 F.2d 1088 (4th Cir. 1980), the court held that a nationwide wage determination normally is not permissible under the Act, but postulated that "there may be the rare and unforeseen service contract which might be performed at locations throughout the country and which would generate truly nationwide competition."

(b) Where the wage rates and fringe benefits contained in a collective bargaining agreement applicable to the predecessor contract are set forth in a determination, locality in such a determination is typically described as the geographic area in which the Federal facility is situated. The determination applies to any sucessor contractor, regardless of place of performance and whether the place of performance is known at the time of bid advertising.

[46 FR 4348, Jan. 16, 1981; 46 FR 11285, Feb. 6, 1981]

§ 4.54 Issuance and revision of wage determinations.

(a) Section 4.4 of Subpart A requires that the awarding agency file a notice of intention to make a service contract which is subject to the Act with the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, prior to any invitation for bids or the commencement of negotiations for any contract exceeding $2,500. Upon receipt of the notice, the Office of Government Contract Wage Standards may issue a new determination of minimum monetary wages and fringe benefits for the classes of service employees who will perform work on the contract or may revise a determination which is currently in effect.

(b) Determinations will be reviewed periodically and where prevailing wage rates or fringe benefits have changed, such changes will be reflected in revised determinations. For example, in a locality where it is determined that the wage rate which prevails for a particular class of service employees is the rate specified in a collective bargaining agreement(s) applicable in that locality, and such agreement(s) specifies increases in such rates to be effective on specific dates, the determinations would be revised to reflect such changes as they become effective. Revised determinations shall be applicable to contracts in accordance with the provisions of § 4.5(a)(2) of Subpart A.

(c) Determinations issued by the Office of Government Contract Wage Standards with respect to particular contracts are required to be incorporated in the invitations for bids or requests for proposals or quotations issued by the contracting agencies, and are to be incorporated in the contract specifications in accordance with § 4.5 of Subpart A. In this manner, prospective contractors and subcontractors are advised of the minimum monetary wages and fringe benefits required under the most recently applicable determination to be paid the service employees who perform the contract work. These requirements are, of course, the same for all bidders so none will be placed at a competitive disadvantage.

§ 4.55 Review and reconsideration of wage determinations.

(a) *Review by the Administrator.* (1) Any interested party affected by a wage determination issued under section 2(a) of the Act may request review and reconsideration by the Administrator. A request for review and reconsideration may be made by the contracting agency or other interested party, including contractors or prospective contractors and associations of contractors, representatives of employees, and other interested Governmental agencies. Any such request must be accompanied by supporting evidence. In no event shall a request for review of any aspect of a wage determination, including its accuracy or its applicability, be considered after the opening of bids in the case of a competitively advertised procurement, or after the commencement of a contract in the case of a negotiated procurement. This limitation is necessary in order to ensure competitive equality and an orderly procurement process.

(2) The Administrator shall, upon receipt of a request for reconsideration, review the data sources relied upon as a basis for the wage determination, the evidence furnished by the party requesting review or reconsideration, and, if necessary to resolve the matter, any additional information found to be relevant to determining prevailing wage rates and fringe benefits in a particular locality. The Administrator, pursuant to a review of available information, may issue a new wage determination, may cause the wage determination to be revised, or may affirm the wage determination issued, and will notify the requesting party in writing of the action taken. The Administrator will render a decision within 30 days of receipt of the request or will notify the requesting party in writing within 30 days of receipt that additional time is necessary.

(b) *Review by the Secretary.* Any decision of the Administrator under paragraph (a) of this section may be appealed to the Secretary within 20 days of issuance of the Administrator's decision. Any such appeal shall be in accordance with the provisions of Part 6 of this title.

Subpart C—Application of the McNamara-O'Hara Service Contract Act

INTRODUCTORY

§ 4.101 Official rulings and interpretations in this subpart.

(a) The purpose of this subpart is to provide, pursuant to the authority cited in § 4.102, official rulings and interpretations with respect to the application of the McNamara-O'Hara Service Contract Act for the guidance of the agencies of the United States and the District of Columbia which may enter into and administer contracts subject to its provisions, the persons desiring to enter into such contracts with these agencies, and the contractors, subcontractors, and employees who perform work under such contracts.

(b) These rulings and interpretations are intended to indicate the construction of the law and regulations which the Department of Labor believes to be correct and which will be followed in the administration of the Act unless and until directed otherwise by Act of Congress or by authoritative ruling of the courts, or if it is concluded upon reexamination of an interpretation that it is incorrect. See for example, *Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944); *Roland Co.* v. *Walling*, 326 U.S. 657 (1946); *Endicott Johnson Corp.* v. *Perkins*, 317 U.S. 501, 507-509 (1943); *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, 128 (1940), *United States* v. *Western Pacific Railroad Co.*, 352 U.S. 59 (1956). The Department of Labor (and not the contracting agencies) has the primary and final authority and responsibility for administering and interpreting the Act, including making determinations of coverage. See *Woodside Village* v. *Secretary of Labor*, 611 F. 2d 312 (9th Cir. 1980); *Nello L. Teer Co.* v. *United States*, 348 F.2d 533, 539-540 (Ct. Cl. 1965), cert. denied, 383 U.S. 934 (Davis-Bacon Act); *North Georgia Building & Construction Trades Council* v. *U.S. Department of Transportation*, 399 F. Supp. 58, 63 (N.D. Ga. 19075) (Davis-Bacon Act); *Zachry Co.* v. *United States*, 344 F.2d 352 (Ct. Cl. 1965) (Davis-Bacon Act); *Curtiss-Wright Corp.* v. *McLucas*, 364 F. Supp. 750, 769-72 (D.N.J. 1973); and 43 Atty. Gen. Ops. —— (March 9, 1979); 53 Comp. Gen. 647, 649-51 (1974); 57 Comp. Gen. 501, 506 (1978).

(c) Court decisions arising under the Act (as well as under related remedial labor standards laws such as the Walsh-Healey Public Contracts Act, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Fair Labor Standards Act) which support policies and interpretations contained in this part are cited where it is believed that they may be helpful. On matters which have not been authoritatively determined by the courts, it is necessary for the Secretary of Labor and the Administrator to reach conclusions as to the meaning and the application of provisions of the law in order to carry out their responsibilities of administration and enforcement (*Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944)). In order that these positions may be made known to persons who may be affected by them, official interpretations and rulings are issued by the Administrator with the advice of the Solicitor of Labor, as authorized by the Secretary (Secretary's Order No. 16-75, Nov. 21, 1975, 40 FR 55913; Employment Standards Order No. 2-76, Feb. 23, 1976, 41 FR 9016). These interpretations are a proper exercise of the Secretary's authority. *Idaho Sheet Metal Works* v. *Wirtz*, 383 U.S. 190, 208 (1966), reh. den. 383 U.S. 963 (1966). References to pertinent legislative history, decisions of the Comptroller General and of the Attorney General, and Administrative Law Judges' decisions are also made in this part where it appears they will contribute to a better understanding of the stated interpretations and policies.

(d) The interpretations of the law contained in this part are official interpretations which may be relied upon. The Supreme Court has recognized that such interpretations of the Act "provide a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it" and "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance" (*Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944)). Interpretations of the agency charged with administering an Act are generally afforded deference by the courts. (*Griggs* v. *Duke Power Co.*, 401 U.S. 424, 433-34 (1971); *Udall* v. *Tallman*, 380 U.S. 1 (1965).) Some of the interpretations in this part relating to the application of the Act are interpretations of provisions which appeared in the original Act before its amendments in 1972 and 1976. Accordingly, the Department of Labor considers these interpretations to be correct, since there were no amendments of the statutory provisions which they interpret. (*United States* v. *Davison Fuel & Dock Co.*, 371 F.2d 705, 711-12 (C.A. 4, 1967).)

(e) On and after final publication of this part in the FEDERAL REGISTER, the interpretations contained herein shall be in effect and shall remain in effect until they are modified, rescinded, or withdrawn. This part supersedes and replaces certain interpretations previously published in the FEDERAL REGISTER and Code of Federal Regulations as Part 4 of this chapter. Prior opinions, rulings, and interpretations and prior enforcement policies which are not inconsistent with the interpretations in this part or with the Act as amended are continued in effect; all other opinions, rulings, interpretations, and enforcement policies on the subjects discussed in the interpretations in this part, to the extent they are inconsistent with the rules herein stated, are superseded, rescinded, and withdrawn.

(f) Principles governing the application of the Act as set forth in this subpart are clarified or amplified in particular instances by illustrations and examples based on specific fact situations. Since such illustrations and examples cannot and are not intended to be exhaustive, or to provide guidance on every problem which may arise under the Act, no inference should be drawn from the fact that a subject or illustration is omitted.

(g) It should not be assumed that the lack of discussion of a particular subject in this subpart indicates the adoption of any particular position by the Department of Labor with respect to such matter or to constitute an interpretation, practice, or enforcement policy. If doubt arises or a question exists, inquiries with respect to matters other than safety and health standards should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, or to any regional office of the Wage and Hour Division. Safety and Health inquiries should be addressed to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210, or to any OSHA regional office. A full description of the facts and any relevant documents should be submitted if an official ruling is desired.

§ 4.102 Administration of the Act.

As provided by section 4 of the Act and under provisions of sections 4 and 5 of the Walsh-Healey Public Contracts Act (49 Stat. 2036, 41 U.S.C. 38, 39) which are made expressly applicable for the purpose, the Secretary of Labor is authorized and directed to administer and enforce the provisions of the McNamara-O'Hara Service Contract Act, to make rules and regulations, issue orders, make decisions, and take other appropriate action under the Act. The Secretary is also authorized to make reasonable limitations and to make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from provisions of the Act (except section 10), but only in special circumstances where it is determined that such action is necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business and is in accord with the remedial purposes of the Act to protect prevailing labor standards. The authority and enforcement powers of the Secretary under the Act are coextensive with the authority and powers under the Walsh-Healey Act. *Curtiss Wright Corp. v. McLucas* 364 F. Supp. 750, 769 (D NJ 1973).

§ 4.103 The Act.

The McNamara-O'Hara Service Contract Act of 1965 (Pub. L. 89-286, 79 Stat. 1034, 41 U.S.C. 351 et seq.), hereinafter referred to as the Act, was approved by the President on October 22, 1965 (1 Weekly Compilation of Presidential Documents 428). It establishes standards for minimum compensation and safety and health protection of employees performing work for contractors and subcontractors on service contracts entered into with the Federal Government and the District of Columbia. It applies to contracts entered into pursuant to negotiations concluded or invitations for bids issued on or after January 20, 1966. It has been amended by Pub. L. 92-473, 86 Stat. 798; by Pub. L. 93-57, 87 Stat. 140; and by Pub. L. 94-489, 90 Stat. 2358.

§ 4.104 What the Act provides, generally.

(a) The provisions of the Act apply to contracts, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States through the use of service employees. Under its provisions, every contract subject to the Act (and any bid specification therefor) entered into by the United States or the District of Columbia in excess of $2,500 must contain stipulations as set forth in § 4.6 of this Part requiring (a) that specified minimum monetary wages and fringe benefits determined by the Secretary of Labor (based on wage rates and fringe benefits prevailing in the locality or, in specified circumstances, the wage rates and fringe benefits contained in a collective bargaining agreement applicable to employees who performed on a predecessor contract) be paid to service employees employed by the contractor or any subcontractor in performing the services contracted for; (b) that working conditions of such employees which are under the control of the contractor or subcontractor meet safety and health standards; and (c) that notice be given to such employees of the compensation due them under the minimum wage and fringe benefits provisions of the contract. Contractors performing work subject to the Act thus enter into competition to obtain Government business on terms of which they are fairly forewarned by inclusion in the contract. (*Endicott Johnson Corp.* v. *Perkins*, 317 U.S. 501, 507 (1943).) The Act's purpose is to impose obligations upon those favored with Government business by precluding the use of the purchasing power of the Federal Government in the unfair depression of wages and standards of employment. (See H.R. Rep. No. 948, 89th Cong., 1st Sess. 2-3 (1965); S. Rep. No. 798, 89th Cong., 1st Sess. 3-4 (1965).) The Act does not permit the monetary wage rates specified in such a contract to be less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act, as amended (29 U.S.C. 206(a)(1)). In addition, it is a violation of the Act for any contractor or subcontractor under a Federal contract subject to the Act, regardless of the amount of the contract, to pay any of his employees engaged in performing work on the contract less than such Fair Labor Standards Act minimum wage. Contracts of $2,500 or less are not, however, required to contain the stipulations described above. These provisions of the Service Contract Act are implemented by the regulations contained in this Part 4 and are discussed in more detail in subsequent sections of Subparts C, D, and E.

§ 4.105 The Act as amended.

(a) The provisions of the Act (see §§ 4.102-4.103) were amended, effective October 9, 1972, by Public Law 92-473, signed into law by the President on that date. By virtue of amendments made to paragraphs (1) and (2) of section 2(a) and the addition to section 4 of a new subsection (c), the compensation standards of the Act (see §§ 4.159-4.179) were revised to impose on successor contractors certain requirements (see § 4.1b) with respect to payment of wage rates and fringe benefits based on those agreed upon for substantially the same services for the same location in collective bargaining agreements entered into by their predecessor contractors (unless such agreed compensation is substantially at variance with that locally prevailing or the agreement was not negotiated at arm's length). The Secretary of Labor is to give effect to the provisions of such collective bargaining agreements in his wage determinations under section 2 of the Act. A new paragraph (5) added to section 2(a) of the Act requires a statement in the government service contract of the rates that would be paid by the contracting agency in the event of its direct employment of those classes of service employees to be employed on the contract work who, if directly employed by the agency, would receive wages determined as provided in 5 U.S.C. 5341. The Secretary of Labor is directed to give due consideration to such rates in determining prevailing monetary wages and fringe benefits under the Act's provisions. Other provisions of the 1972 amendments include the addition of a new section 10 to the Act to insure that wage determinations are issued by the Secretary for substantially all service contracts subject to section 2(a) of the Act at the earliest administratively feasible time; an amendment to section 4(b) of the Act to provide, in addition to the conditions previously specified for issuance of administrative limitations, variations, tolerances, and exemptions (see § 4.123), that administrative action in this regard shall be taken only in special circumstances where the Secretary determines that it is in accord with the remedial purpose of the Act to protect prevailing labor standards; and a new subsection (d) added to section 4 of the Act providing for the award of service contracts for terms not more than 5 years with provision for periodic adjustment of minimum wage rates and fringe benefits payable thereunder by the issuance of wage determinations by the Secretary of Labor during the term of the contract. A further amendment to section 5(a) of the Act requires the names of contractors found to have violated the Act to be submitted for the debarment list (see (§ 4.188) not later than 90 days after the hearing examiner's finding of violation unless the Secretary recommends relief, and provides that such recommendations shall be made only because of unusual circumstances.

(b) The provisions of the Act were amended by Pub. L. 93-57, 87 Stat. 140, effective July 6, 1973, to extend the Act's coverage to Canton Island.

(c) The provisions of the Act were amended by Pub. L. 94-489, 90 Stat. 2358, approved October 13, 1976, to extend the Act's coverage to white collar workers. Accordingly, the minimum wage protection of the Act now extends to all workers, both blue collar and white collar, other than persons employed in a bona fide executive, administrative, or professional capacity as those terms are used in the Fair Labor Standards Act and in Part 541 of Title 29. Pub. L. 94-489 accomplished this change by adding to Section 2(a)(5) of the Act a reference to 5 U.S.C. 5332, which deals with white collar workers, and by amending the definition of service contract employee in Section 8(b) of the Act.

(d) Included in this Part 4 and in Part 6 of this subtitle are provisions to give effect to the amendments mentioned in this section.

§ 4.106 [Reserved]

AGENCIES WHOSE CONTRACTS MAY BE COVERED

§ 4.107 Federal contracts.

(a) Section 2(a) of the Act covers contracts (and any bid specification therefor) "entered into by the United States" and section 2(b) applies to contracts entered into "with the Federal Government." Within the meaning of these provisions, contracts entered into by the United States and contracts with the Federal Government include generally all contracts to which any agency or instrumentality of the U.S. Government becomes a party pursuant to authority derived from the Constitution and laws of the United States. The Act does not authorize any distinction in this respect between such agencies and instrumentalities on the basis of their inclusion in or independence from the executive, legislative, or judicial branches of the Government, the fact that they may be corporate in form, or the fact that payment for the contract services is not made from appropriated funds. Thus, contracts of wholly owned Government corporations, such as the Postal Service, and those of nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces, or of other Federal agencies, such as Federal Reserve Banks, are included among those subject to the general coverage of the Act. (*Brinks, Inc.* v. *Board of Governors of the Federal Reserve System,* 466 F. Supp. 116 (D DC 1979); 43 Atty. Gen. Ops. ——— (September 26, 1978).) Contracts with the Federal Government and contracts entered into "by the United States" within the meaning of the Act do not, however, include contracts for services entered into on their own behalf by agencies or instrumentalities of other Governments within the United States, such as those of the several States and their political subdivisions, or of Puerto Rico, the Virgin Islands, Guam, or American Samoa.

(b) Where a Federal agency exercises its contracting authority to procure services desired by the Government, the method of procurement utilized by the contracting agency is not controlling in determining coverage of the contract as one entered into by the United States. Such contracts may be entered into by the United States either through a direct award by a Federal agency or through the exercise by another agency (whether governmental or private) of authority granted to it to procure services for or on behalf of a Federal agency. Thus, sometimes authority to enter into service contracts of the character described in the Act for and on behalf of the Government and on a cost-reimbursable basis may be delegated, for the convenience of the contracting agency, to a prime contractor which has the responsibility for all work to be done in connection with the operation and management of a Federal plant, installation, facility, or program, together with the legal authority to act as agency for and on behalf of the Government and to obligate Government funds in the procurement of all services and supplies necessary to carry out the entire program of operation. The contracts entered into by such a prime contractor with secondary contractors for and on behalf of the Federal agency pursuant to such delegated authority, which have such services as their principal purpose, are deemed to be contracts entered into by the United States and contracts with the Federal Government within the meaning of the Act. However, service contracts entered into by State or local public bodies with purveyors of services are not deemed to be entered into by the United States merely because such services are paid for with funds of the public body which have been received from the Federal Government as a grant under a Federal program. For example, a contract entered into by a municipal housing authority for tree trimming, tree removal, and landscaping for an urban renewal project financed by Federal funds is not a contract entered into by the United States and is not covered by the Service Contract Act. Similarly, contracts let under the Medicaid program which are financed by Federally-assisted grants to the States, and contracts which provide for insurance benefits to a third party under the Medicare program are not subject to the Act.

[46 FR 4337, Jan. 16, 1981; 46 FR 11285, Feb. 6, 1981]

§ 4.108 District of Columbia contracts.

Section 2(a) of the Act covers contracts (and any bid specification therefor) in excess of $2,500 which are "entered into by the * * * District of Columbia." The contracts of all agencies and instrumentalities which procure contract services for or on behalf of the District or under the authority of the District Government are contracts entered into by the District of Columbia within the meaning of this provision. Such contracts are also considered contracts entered into with the Federal Government or the United States within the meaning of section 2(b), section 5, and the other provisions of the Act. The legislative history indicates no intent to distinguish District of Columbia contracts from the other contracts made subject to the Act, and traditionally, under other statutes. District Government contracts have been made subject to the same labor standards provisions as contracts of other agencies and instrumentalities of the United States.

§ 4.109 [Reserved]

COVERED CONTRACTS GENERALLY

§ 4.110 What contracts are covered.

(a) The Act covers service contracts of the Federal agencies described in §§ 4.107-4.108. Except as otherwise specifically provided (see §§ 4.115 et seq.), all such contracts, the principal purpose of which is to furnish services in the United States through the use of service employees, are subject to its terms. This is true of contracts entered into by such agencies with States or their political subdivisions, as well as such contracts entered into with private employers. Contracts between a Federal or District of Columbia agency and another such agency are not within the purview of the Act;

however, "subcontracts" awarded under "prime contracts" between the Small Business Administration and another Federal agency pursuant to various preferential set-aside programs, such as the 8(a) program, are covered by the Act. It makes no difference in the coverage of a contract whether the contract services are procured through negotiation or through advertising for bids. Also, the mere fact that an agreement is not reduced to writing does not mean that the contract is not within the coverage of the Act. The amount of the contract is not determinative of the Act's coverage, although the requirements are different for contracts in excess of $2,500 and for contracts of a lesser amount. The Act is applicable to the contract if the principal purpose of the contract is to furnish services, if such services are to be furnished in the United States, and if service employees will be used in providing such services. These elements of coverage will be discussed separately in the following sections.

(b) *"Contract" as including "any bid specification"*. The Act, by its express terms, applies to "every contract (and any bid specification therefor) * * * the principal purpose of which is to furnish services in the United States through the use of service employees". Thus, as noted in subsequent sections discussing the application of the Act to particular contracts, the Act's provisions may be applicable to separate specifications for services in a contract but not to other contract specifications such as construction or supply specifications. Accordingly, except where otherwise noted, the term "contract" as used in this part shall be deemed to include any contract subject wholly or in part to the provisions of the Act. (See § 4.1a(e).)

§ 4.111 Contracts "to furnish services."

(a) *"Principal purpose" as criterion.* Under its terms, the Act applies to a "contract (and any bid specification therefor) * * * the principal purpose of which is to furnish services * * *." The principal purpose criterion applies only in determining whether a contract or bid specification is for services. Covered contracts need not be performed "principally in the United States" or "principally through the use of service employees." (See §§ 4.112 and 4.113.) If the principal purpose is to provide something other than services of the character contemplated by the Act and any such services which may be performed are only incidental to the performance of a contract or bid specification for another purpose, the Act does not apply. However, as will be seen by examining the illustrative examples of covered contracts in §§ 4.130 et seq., no hard and fast rule can be laid down as to the precise meaning of the term "principal purpose". This remedial Act is intended to be applied to a wide variety of contracts, and the Act does not define or limit the types of services which may be contracted for under a contract the principal purpose of which is to furnish services. Further, the nomenclature, type, or particular form of contract used by procurement agencies is not determinative of coverage. Whether the principal purpose of a particular contract is the furnishing of services through the use of service employees is largely a question to be determined on the basis of all the facts in each particular case. Even where tangible items of substantial value are important elements of the subject matter of the contract, the facts may show that they are of secondary import to the furnishing of services in the particular case. This principle is illustrated by the examples set forth in § 4.131.

(b) *Determining whether a contract is for "services", generally.* Except indirectly through the definition of "service employee" the Act does not define, or limit, the types of "services" which may be contracted for under a contract "the principal purpose of which is to furnish services". As stated in the congressional committee reports on the legislation, the types of service contracts covered by its provisions are varied. Among the examples cited are contracts for laundry and dry cleaning, for transportation of the mail, for custodial, janitorial, or guard service, for packing and crating, for food service, and for miscellaneous housekeeping services. Covered contracts for services would also include those for other types of services which may be performed through the use of the various classes of service employees included in the definition in section 8(b) of the Act (see § 4.113). Examples of some such contracts are set forth in §§ 4.130 et seq. In determining questions of contract coverage, due regard must be given to the apparent legislative intent to include generally as contracts for "services" those contracts which have as their principal purpose the procurement of something other than the construction activity described in the Davis-Bacon Act or the materials, supplies, articles, and equipment described in the Walsh-Healey Act. The Committee reports in both the House and Senate, and statements made on the floor of the House, took note of the labor standards protections afforded by these two Acts to employees engaged in the performance of construction and supply contracts and observed: "The service contract is now the only remaining category of Federal contracts to which no labor standards protections apply" (H. Rept. 948, 89th Cong., 1st Sess., p. 1; see also S. Rept. 798, 89th Cong., 1st Sess., p. 1; daily Congressional Record Sept. 20, 1965, p. 23497). A similar understanding of contracts principally for "services" as embracing contracts other than those for construction or supplies is reflected in the statement of President Johnson upon signing the Act (1 Weekly Compilation of Presidential Documents, p. 428).

§ 4.112 Contracts to furnish services "in the United States."

(a) The Act covers contract services furnished "in the United States, including" any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Islands, Eniwetok Atoll, Kwajalein Atoll and Johnston Island. The definition expressly excludes any other territory under the jurisdiction of the United States and any United States base or possession within a foreign country. Services to be performed on a vessel operating exclusively in international or foreign waters outside the geographic areas named in section 8(d) would not be services furnished "in the United States" within the meaning of the Act.

(b) A service contract to be performed in its entirety outside the geographic limits of the United States as thus defined is not covered and is not subject to the labor standards of the Act. However, if a service contract is to be performed in part within and in part without these geographic limits, the stipulations required by § 4.6 or § 4.7, as appropriate, must be included in the invitation for bids or negotiation documents and in the contract, and the labor standards must be observed with respect to that part of the contract services that is performed within these geographic limits. In such a case, the requirements of the Act and of the contract clauses will not be applicable to the services furnished outside the United States.

§ 4.113 Contracts to furnish services "through the use of service employees".

(a) *Use of "service employees" in a contract performance.* (1) As indicated in § 4.110, the Act covers service contracts only where "service employees" will be used in performing the services which it is the purpose of the contract to procure. A service contract otherwise subject to the Act ordinarily will meet this condition if any of the services which it is the principal purpose of the contract to obtain will be furnished through the use of any service employee or employees. Even where it is contemplated that the services (of the kind performed by service employees) will be performed individually by the contractor, the contract cannot be considered outside the reach of the Act unless it is known in advance that the contractor or any subcontractor will in no event use any service employee during the term of the contract in furnishing the services called for. If the contracting officer knows when advertising for bids or concluding negotiations that no such employee will be used by the contractor in any event in providing the contract services, the Act will not be deemed applicable to the contract and the contract clauses required by § 4.6 or § 4.7 may be omitted. The fact that the required services will be performed by municipal employees or employees of a State would not remove the contract from the purview of the Act, as this Act does not contain any exemption for contracts performed by such employees. Also, as discussed in paragraph (a)(2) of this section where the services the Government wants under the contract are of a type that will require the use of service employees as defined in section 8(b) of the Act, the contract is not taken out of the purview of the Act by the fact that the manner in which the services of such employees are performed will be subject to the continuing overall supervision of professional personnel to whom the Act does not apply.

(2) The coverage of the Act does not extend, however, to contracts which have as their principal purpose the procurement of a type of service in the furnishing of which no service employees will be used. A contract for medical services by professional medical personnel is an example of such a contract. So are other contracts under which the desired services called for by the Government are to be performed exclusively by bona fide executive, administrative, or professional personnel as defined in Part 541 of this title (see paragraph (b) of this section).

(3)(i) In addition to the types of contracts discussed in paragraph (a)(2) of this section, the Department does not require application of the Act to any contract for professional services which is performed essentially by professional employees, with the use of service employees being only a minor factor in the performance of the contract. This tolerance does not extend to a contract for professional services which may involve the use of service employees to a significant or substantial extent even though there is some use of professional employees in the performance of the contract. This tolerance is issued pursuant to section 4(b) of the Act. It has been found to be necessary and proper in the public interest and to be in accord with the remedial purpose of the Act.

(ii) In applying this tolerance, if service employees constitute less than 10 percent of the total projected employment or staff years under a contract, the Act will not be applied to such contract. If service employees constitute 20 percent or more of the total projected employment or staff years under the contract, the Act will be required to be applied, since this would clearly be a significant use of service employees. Where the projected use of service employees is between 10 and 20 percent, the Department of Labor should be consulted, since such situations require consideration of other factors such as the nature of the contract work, the type of work performed by service employees, how necessary the work is to contract performance, the amount of contract work performed by service employees vis-a-vis professional employees, and the total number of service employees employed on the contract.

(4) Under these principles, the Act applies to many contracts for research and development, statistical surveys, engineering research and designing, computer services, etc., because the contracts may involve the use of a significant number of service employees. Laboratory technicians, interviewers, draftsmen, computer operators, and data entry personnel are a few examples of the classes of service employees that may be employed on such contracts. While the work of such service employees may be performed under the supervision and direction of professional personnel and the final analysis and reporting may be performed by professionals, nevertheless, the work performed by the service employees is a significant and important part of the overall contract requirements.

(b) *"Service employees" defined.* In determining whether or not any of the contract services will be performed by service employees, the definition of "service employee" in section 8(b) of the Act is controlling. It provides:

> The term "service employee" means any person engaged in the performance of a contract entered into by the United States and not exempted under section 7, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are de-

fined in part 541 of title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

It will be noted that the definition expressly excludes those employees who are employed in a bona fide executive, administrative, or professional capacity as defined in Part 541 of this title and as discussed further in § 4.156. Some of the specific types of service employees who may be employed on service contracts are noted in other sections which discuss the application of the Act to employees.

[46 FR 4337, Jan. 16, 1981; 46 FR 11285, Feb. 6, 1981]

§ 4.114 Subcontracts.

(a) *"Contractor" as including "subcontractor."* Except where otherwise noted or where the term "Government prime contractor" is used, the term "contractor" as used in this Part 4 shall be deemed to include a subcontractor. The term "contractor" as used in the contract clauses required by Subpart A in any subcontract under a covered contract shall be deemed to refer to the subcontractor, or, if in a subcontract entered into by such a subcontractor, shall be deemed to refer to the lower level subcontractor. (See § 4.1a(f).)

(b) *Liability of Prime Contractor.* When a contractor undertakes a contract subject to the Act, the contractor agrees to assume the obligation that the Act's labor standards will be observed in furnishing the required services. This obligation may not be relieved by shifting all or part of the work to another, and the prime contractor is jointly and severally liable with any subcontractor for any acts, omissions, or underpayments on the part of a subcontractor which would constitute a violation of the prime contract. The prime contractor is required to include the prescribed contract clauses (§§ 4.6-4.7) and applicable wage determination in all subcontracts and the appropriate enforcement sanctions provided under the Act may be invoked against both the prime contractor and the subcontractor in the event of failure to comply with any of the Act's requirements.

SPECIFIC EXCLUSIONS

§ 4.115 Exemptions and exceptions generally.

(a) The Act, in section 7, specifically excludes from its coverage certain contracts and work which might otherwise come within its terms as procurements the principal purpose of which is to furnish services through the use of service employees.

(b) The statutory exemptions in section 7 of the Act are as follows:

(1) Any contract of the United States or District of Columbia for construction, alteration, and/or repair, including painting and decorating of public buildings or public works;

(2) Any work required to be done in accordance with the provisions of the Walsh-Healy Public Contracts Act (49 Stat. 2036);

(3) Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line, or oil or gas pipeline where published tariff rates are in effect;

(4) Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;

(5) Any contract for public utility services, including electric light and power, water, steam, and gas;

(6) Any employment contract providing for direct services to a Federal agency by an individual or individuals;

(7) Any contract with the Post Office Department, (now the U.S. Postal Service) the principal purpose of which is the operation of postal contract stations.

§ 4.116 Contracts for construction activity.

(a) *General scope of exemption.* The Act, in paragraph (1) of section 7, exempts from its provisions "any contract of the United States or District of Columbia for construction, alteration and/or repair, including painting and decorating of public buildings or public works." This language corresponds to the language used in the Davis-Bacon Act to describe its coverage (40 U.S.C. 276a). The legislative history of the McNamara-O'Hara

Service Contract Act indicates that the purpose of the provision is to avoid overlapping coverage of the two acts by excluding from the application of the McNamara-O'Hara Act those contracts (and any bid specification therefor) to which the Davis-Bacon Act is applicable and in the performance of which the labor standards of that Act are intended to govern the compensation payable to the employees of contractors and subcontractors on the work. (See H. Rept. 798, pp. 2, 5, and H. Rept. 948, pp. 1, 5, also Hearing, Special Subcommittee on Labor, House Committee on Education and Labor, p. 9 (89th Cong., 1st sess.).) The intent of section 7(1) is simply to exclude from the provisions of the Act those construction contracts which involve the employment of persons whose wage rates and fringe benefits are determinable under the Davis-Bacon Act.

(b) *Contracts not within exemption.* Section 7(1) does not exempt contracts which, for purposes of the Davis-Bacon Act, are not considered to be of the character described by the corresponding language in that Act, and to which the provisions of the Davis-Bacon Act are therefore not applied. Such contracts are accordingly subject to the McNamara-O'Hara Act where their principal purpose is to furnish services in the United States through the use of service employees. For example, a contract for clearing timber or brush from land or for the demolition or dismantling of buildings or other structures located thereon may be a contract for construction activity subject to the Davis-Bacon Act where it appears that the clearing of the site is to be followed by the construction of a public building or public work at the same location. If, however, no further construction activity at the site is contemplated the Davis-Bacon Act is considered inapplicable to such clearing, demolition, or dismantling work. In such event, the exemption in section 7(1) of the McNamara-O'Hara Act has no application and the contract will be subject to the Act in accordance with its general coverage provisions. It should be noted that the fact that a contract may be labeled as one for the sale and removal of property, such as salvage material, does not negate coverage under the Act even though title to the removable property passes to the contractor. While the value of the property being sold in relation to the services performed under the contract is a factor to be considered in determining coverage, the principal purpose of removal, dismantling, and demolition contracts is to furnish services through the use of service employees and thus these contracts are subject to the Act. (See also § 4.131.)

(c) *Partially exempt contracts.* (1) Instances may arise in which, for the convenience of the Government, instead of awarding separate contracts for construction work subject to the Davis-Bacon Act and for services of a different type to be performed by service employees, the contracting officer may include separate specifications for each type of work in a single contract calling for the performance of both types of work. For example, a contracting agency may invite bids for the installation of a plumbing system or for the installation of a security alarm system in a public building and for the maintenance of the system for one year, under separate bid specifications. In such a case, the exemption provided by section 7(1) will be deemed applicable only to that portion of the contract which calls for construction activity subject to the Davis-Bacon Act. The contract documents are required to contain the clauses prescribed by § 4.6 for application to the contract obligation to furnish services through the use of service employees, and the provisions of the McNamara-O'Hara Act will apply to that portion of the contract.

(2) *Supply, services, or maintenance contracts involving construction work.* The provisions of both the Davis-Bacon Act and the Service Contract Act would generally apply to contracts involving construction and service work. The exemption provided by section 7(1) of the Act would be applicable to construction contract work in such hybrid contracts where

(i) The contract contains specific requirements for substantial amounts of construction, reconstruction, alteration, or repair work (hereinafter referred to as construction) or it is ascertainable that a substantial amount of construction work will be necessary for the performance of the contract (the word "substantial" relates to the type and quantity of construction work to be performed and not merely to the total value of construction work (whether in absolute dollars or cost percentages) as compared to the total value of the contract); and

(ii) The construction work is physically or functionally separate from, and as a practical matter is capable of being performed on a segregated basis from, the other work called for by the contract.

§ 4.117 Work subject to requirements of Walsh-Healey Act [Reserved]

§ 4.118 Contracts for carriage subject to published tariff rates.

The Act, in paragraph (3) of section 7, exempts from its provisions "any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect". In order for this exemption to be applicable, the contract must be for such carriage by a common carrier described by the terms used. It does not, for example, apply to contracts for taxicab or ambulance service, because taxicab and ambulance companies are not among the common carriers specified by the statute. Also, a contract for transportation service does not come within this exemption unless the service contracted for is actually governed by published tariff rates in effect pursuant to State or Federal law for such carriage. The contracts excluded from the reach of the Act by this exemption are typically those where there is on file with the Interstate Commerce Commission or an appropriate State or local regulatory body a tariff rate applicable to the transportation involved, and the transportation contract between the Government and the carrier is evidenced by a bill of lading citing the published tariff rate. An administrative exemption has been provided for certain contracts where such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act. See § 4.123(d). It should be noted further that only such contracts for the carriage of "freight or personnel" are exempt. Further, the exemption cannot apply where the contracts are principally for packing, crating, handling, loading, and/or storage of goods, with local drayage constituting an incidental part of the contract work. Also this exemption thus does not exclude any contracts for the transportation of mail from the application of the Act, because the term "freight" does not include the mail. (For an administrative exemption of certain contracts with common carriers for carriage of mail, see § 4.123(d)).

§ 4.119 Contracts for services of communications companies.

The Act, in paragraph (4) of section 7, exempts from its provisions "any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934." This exemption is applicable to contracts with such companies for communication services regulated under the Communications Act. It does not exempt from the Act any contracts with such companies to furnish any other kinds of services through the use of service employees.

§ 4.120 Contracts for public utility services.

The Act, in paragraph (5) of section 7, exempts from its provisions "any contract for public utility services, including electric light and power, water, steam, and gas." This exemption is applicable to contracts for such services with companies whose rates therefor are regulated under State, local, or Federal law governing operations of public utility enterprises. Contracts entered into with public utility companies to furnish services through the use of service employees, other than those subject to such rate regulation, are not exempt from the Act. Among the contracts included in the exemption would be those between Federal electric power marketing agencies and investor-owned electric utilities, Rural Electrification Administration cooperatives, municipalities and State agencies engaged in the transmission and sale of electric power and energy. (See H. Rept. No. 948, 89th Cong., 1st sess., p. 4).

§ 4.121 Contracts for individual services.

The Act, in paragraph (6) of section 7, exempts from its provisions "any employment contract providing for direct services to a Federal agency by an individual or individuals." This exemption, which applies only to an "employment contract" for "direct services," makes it clear that the Act's application to Federal contracts for services is intended to be limited to service contracts entered into with independent contractors. If a contract to furnish services (to be performed by a service employee as defined in the Act) provides that they will be furnished directly to the Federal agency by the individual under conditions or circumstances which will make him an employee of the agency in providing the contract service, the exemption applies and the contract will not be subject to the Act's provisions. The exemption does not exclude from the Act any contract for services of the kind performed by service employees which is entered into with an independent contractor whose individual services will be used in performing the contract, but as noted earlier in § 4.113, such a contract would be outside the general coverage of the Act if only the contractor's individual services would be furnished and no service employee would in any event be used in its performance.

§ 4.122 Contracts for operation of postal contract stations.

The Act, in paragraph (7) of section 7, exempts from its provisions "any contract with the Post Office Department, [now the U.S. Postal Service], the principal purpose of which is the operation of postal contract stations." The exemption is limited to postal service contracts having the operation of such stations as their principal purpose. A provision of the legislation which would also have exempted contracts with the U.S. Postal Service having as their principal purpose the transportation, handling, or delivery of the mails was eliminated from the bill during its consideration by the House Committee on Education and Labor (H. Rept. 948, p. 1, 89th Cong., 1st sess.).

§ 4.123 Administrative limitations, variances, tolerances, and exemptions.

(a) *Authority of the Secretary.* Section 4(b) of the Act as amended in 1972 authorizes the Secretary to "provide such reasonable limitations" and to "make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act (other than § 10), but only in special circumstances where he determines that such limitation, variation, tolerances, or exemption is necessary and proper in the public interest or to avoid the serious impairment of Government business, and is in accord with the remedial purpose of this Act to protect prevailing labor standards." This authority is similar to that vested in the Secretary under section 6 of the Walsh-Healey Public Contracts Act (41 U.S.C. 40) and under section 105 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 331).

(b) *Administrative action under section 4(b) of the Act.* The authority conferred on the Secretary by section 4(b) of the Act will be exercised with due regard to the remedial purpose of the statute to protect prevailing labor standards and to avoid the undercutting of such standards which could result from the award of Government work to contractors who will not observe such standards, and whose saving in labor cost therefrom enables them to offer a lower price to the Government than can be offered by the fair employers who maintain the prevailing standards. Administrative action consistent with this statutory purpose may be taken under section 4(b) with or without a request therefor, when found necessary and proper in accordance with the statutory standards. No formal procedures have been prescribed for requesting such action. However, a request for exemption from the Act's provisions will be granted only upon a strong and affirmative showing that it is necessary and proper in the public interest or to avoid serious impairment of Government business, and is in accord with the remedial purpose of the Act to protect prevailing labor standards. If the request for administrative action under section 4(b) is not made by the headquarters office of the contracting agency to which the contract services are to be provided, the views of such office on the matter should be obtained and submitted with the request or the contracting officer may forward such a request through channels to the agency headquarters for submission with the latter's views to the Administrator of the Wage and Hour Division, Department of Labor, whenever any wage payment issues are involved. Any request relating to an occupational safety or health issue shall be submitted to the Assistant Secretary for Occupational Safety and Health, Department of Labor.

(c) *Documentation of official action under section 4(b).* All papers and documents made a part of the official record of administrative action pursuant to section 4(b) of the Act are available for public inspection in accordance with the regulations in 29 CFR Part 70. Limitations, variations, tolerances and exemptions of general applicability and legal effect promulgated pursuant to such authority are published in the FEDERAL REGISTER and made a part of the rules incorporated in this Part 4. For convenience in use of the rules, they are generally set forth in the sections of this part covering the subject matter to which they relate. (See, for example, the exemption provided in §§ 4.5(b), 4.6(o), and the limitations set forth in §§ 4.115 et seq.) Any rules that are promulgated under section 4(b) of the Act relating to subject matter not dealt with elsewhere in this Part 4 will be set forth immediately following this paragraph.

(d) In addition to the statutory exemptions in § 7 of the Act (see § 4.115(c)), the following types of contracts have been exempted from all the provisions of the Service Contract Act of 1965, pursuant to section 4(b) of the Act, which exemptions the Secretary of Labor found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business.

(1) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom.

(2) Any contract entered into by the U.S. Postal Service with an individual owner-operator for mail service where it is not contemplated at the time the contract is made that such owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness, or accident.

(3) Contracts for the carriage of freight or personnel where such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act.

PARTICULAR APPLICATION OF CONTRACT COVERAGE PRINCIPLES

§ 4.130 Types of covered service contracts illustrated.

(a) The types of contracts, the principal purpose of which is to furnish services through the use of service employees, are too numerous and varied to permit an exhaustive listing. The following list is illustrative, however, of the types of services called for by such contracts that have been found to come within the coverage of the Act. Other examples of covered contracts are discussed in other sections of this subpart.

(1) Aerial spraying,

(2) Aerial reconnaissance for fire detection,

(3) Ambulance service,

(4) Barber and beauty shop services,

(5) Cafeteria and food service,

(6) Carpet laying (other than part of construction) and cleaning,

(7) Cataloging services,

(8) Chemical testing and analysis,

(9) Clothing alteration and repair,

(10) Computer services,

(11) Concessionaire services,

(12) Custodial, janitorial, and housekeeping services,

(13) Data collection, processing, and/or analysis services,

(14) Demolition, dismantling and/or removal of buildings and other real property (other than part of construction),

(15) Drafting and illustrating,

(16) Electronic equipment maintenance and operation and engineering support services,

(17) Exploratory drilling (other than part of construction),

(18) Film processing,

(19) Fire fighting and protection,

(20) Fueling services,

(21) Furniture repair and rehabilitation,

(22) Geological field surveys and testing,

(23) Grounds maintenance,

(24) Guard and watchman security service,

(25) Inventory services,

(26) Keypunching and keyverifying contracts,

(27) Laboratory analysis services,

(28) Landscaping (other than part of construction),

(29) Laundry and dry cleaning,

(30) Linen supply services,

(31) Lodging and/or meals,

(32) Mail hauling,

(33) Mailing and addressing services,

(34) Maintenance and repair of all types of equipment, e.g., aircraft, engines, electrical motors, vehicles, and automated data processing, electronic, telecommunications, office and related business, and construction equipment,

(35) Mess attendant services,

(36) Mortuary services,

(37) Motor pool operation,

(38) Nursing home services,

(39) Operation, maintenance, or logistic support of a Federal facility,

(40) Packing and crating,

(41) Parking services,

(42) Pest control,

(43) Property management,

(44) Snow removal,

(45) Stenographic reporting,

(46) Support services at military installations,

(47) Surveying and mapping services (preliminary but not directly related to construction),

(48) Taxicab services,

(49) Telephone and field interview services,

(50) Timber removal/sale contracts,

(51) Tire and tube repairs,

(52) Transporting property or personnel (except as explained in § 4.118),

(53) Trash and garbage removal,

(54) Vending machine services,

(55) Visual and graphic arts,

(56) Warehousing or storage.

§ 4.131 Furnishing services involving more than use of labor.

(a) If the principal purpose of a contract is to furnish services in the performance of which service employees will be used, the Act will apply to the contract, in the absence of an exemption, even though the use or furnishing of nonlabor items may be an important element in the furnishing of the services called for by its terms. The Act is concerned with protecting the labor standards of workers engaged in performing such contracts, and is applicable if the statutory coverage test is met, regardless of the form in which the contract is drafted. The proportion of the labor cost to the total cost of the contract and the necessity of furnishing or receiving tangible nonlabor items in performing the contract obligations will be considered but are not necessarily determinative. A procurement that requires tangible items to be supplied to the Government or the contractor as a part of the service furnished is covered by the Act so long as the facts show that the contract is chiefly for services, and that the furnishing of tangible items is of secondary importance.

(b) Some examples of covered contracts illustrating these principles may be helpful. One such example is a contract for the maintenance and repair of typewriters. Such a contract may require the contractor to furnish typewriter parts, as the need arises, in performing the contract services. Since this does not change the principal purpose of the contract, which is to furnish the maintenance and repair services through the use of service employees, the contract remains subject to the Act.

(c) Another example of the application of the above principle is a contract for the recurrent supply to a Government agency of freshly laundered items on a rental basis. It is plain from the legislative history that such a contract is typical of those intended to be covered by the Act. S. Rept. 798, 89th Cong., 1st Sess., p. 2; H. Rept. 948, 89th Cong., 1st Sess., p. 2. Although tangible items owned by the contractor are provided on a rental basis for the use of the Government, the service furnished by the contractor in making them available for such use when and where they are needed, through the use of service employees who launder and deliver them, is the principal purpose of the contract.

(d) Similarly, a contract in the form of rental of equipment with operators for the plowing and reseeding of a park area is a service contract. The Act applies to it because its principal purpose is the service of plowing and reseeding, which will be performed by service employees, although as a necessary incident the contractor is required to furnish equipment. For like reasons the contracts for aerial spraying and aerial reconnaissance listed in § 4.130 are covered, even though the use of airplanes, an expensive item of equipment, is essential in performing such services. In general, contracts under which the contractor agrees to provide the Government with vehicles or equipment on a rental basis with drivers or operators for the purpose of furnishing services are covered by the Act. Such contracts are not considered contracts for furnishing equipment within the meaning of the Walsh-Healey Public Contracts Act. On the other hand, contracts under which the contractor provides equipment with operators for the purpose of construction of a public building or public work, such as road resurfacing or dike repair, even where the work is performed under the supervision of Government employees, would be within the exemption in section 7(1) of the Act as contracts for construction subject to the Davis-Bacon Act. (See § 4.116.)

(e) Contracts for data collection, statistical surveys, computer services, and the like are within the general coverage of the Act even though the contractor may be required to furnish such tangible items as written reports or computer printouts, since items of this nature are considered to be of secondary importance to the services which it is the principal purpose of the contract to procure.

(f) Contracts under which the contractor receives tangible items from the Government in return for furnishing services (which items are in lieu of or in addition to monetary consideration granted by either party) are covered by the Act where the facts show that the furnishing of such services is the principal purpose of the contracts. For example, so-called "timber sales" contracts are subject to the Act where removal of trees is accomplished for the purpose of forest management, such as removal of diseased or damaged trees; to open up the forest for public use, such as camping; or for similar services. Similarly, even where the removal of trees is not accomplished for the purpose of forest management or some other service, such contracts generally contain service specifications which are subject to the act, such as building of temporary roads, firefighting and control, erosion control, slash removal and trimming, and removal of diseased or injured trees. Under these contracts, the fact that a contractor will receive a substantial amount of timber is of secondary importance to the services which it is the principal purpose of the Government contract (or specification) to procure. The same principle applies with respect to so-called property removal or disposal contracts which involve demolition of buildings or other structures.

§ 4.132 Services and other items to be furnished under a single contract.

If the principal purpose of a contract or bid specification (i.e., a line item in a bid or contract) is to furnish services through the use of service employees within the meaning of the Act, the contract to furnish such services is not removed from the Act's coverage merely because, as a matter of convenience in procurement, it is combined in a single contract document with specifications for the procurement of different or unrelated items. For example, a contracting agency may invite bids for supplying a quantity of new typewriters and for the maintenance and repair of the typewriters under separate bid specifications. The principal purpose of the latter, but not the former, would be the furnishing of services through the use of service employees; however, the specifications for each might be included in a single contract with a typewriter company for the convenience of the parties. In such a case, the contract obligation to furnish the maintenance and repair services would be subject to the provisions of the Act. The "principal purpose" test would be applicable to the specification for such services rather than to the combined contract. The Act would not apply in such case to the contract obligation to furnish new typewriters, although its performance would be subject to the provisions of the Walsh-Healey Public Contracts Act if the amount was in excess of $10,000. With respect to contracts which contain separate specifications for the furnishing of services and construction activity, see § 4.116(c).

§ 4.133 Beneficiary of contract services.

(a) The Act does not say to whom the services under a covered contract must be furnished. So far as its language is concerned, it is enough if the contract is "entered into" by and with the government and if its principal purpose is "to furnish services in the United States through the use of service employees". It is clear that Congress intended to cover at least contracts for services of direct benefit to the Government, its property, or its civilian or military personnel for whose needs it is necessary or desirable for the government to make provision for such services. For example, the legislative history makes specific reference to such contracts as those for furnishing food service and laundry and dry cleaning service for personnel at military installations. Furthermore, there is no limitation in the Act regarding the beneficiary of the services, nor is there any indication that only contracts for services of direct benefit to the Government, as distinguished from the general public, are subject to the Act. Therefore, where the principal purpose of the Government contract or any bid specification therefor is to provide services through the use of service employees, the contract is covered by the Act, regardless of the direct beneficiary of the services or the source of the funds from which the contractor is paid for the service, and irrespective of whether the contractor performs the work in its own establishment, on a Government installation, or elsewhere. The fact that the contract requires or permits the contractor to provide the services directly to individual personnel as a concessionaire, rather than through the contracting agency, does not negate coverage by the Act.

(b) Because of comments made shortly after the Act's passage by some members of Congress that the Act's requirements should not be imposed on certain concession contracts providing services to the general public, the Department of Labor, pursuant to Section 4(b) of the Act, exempts from the provisions of the Act certain kinds of concession contracts as provided herein. Specifically, concession contracts (such as those entered into by the National Park Service) for the furnishing of food, lodging, automobile fuel, souvenirs, newspaper stands, and recreational equipment to the general public, as distinguished from the United States Government or its personnel, are exempt. Where concession contracts, however, include specifications for services other than those stated, such as the maintenance of government buildings and grounds, and the dissemination of information about government programs or facilities, those services are not exempt. Exemption of additional recreational or similar services under concession contract will be determined in the discretion of the Secretary on a case-by-case basis in accordance with 29 CFR 4.123 and section 4(b) of the Act. The exemption provided does not affect a concession contractor's obligation to comply with the labor standards provisions of any other statutes such as the Contract Work Hours and Safety Standards Act, the Davis-Bacon Act (40 U.S.C 276 *et seq.*; see Part 5 of this title) and the Fair Labor Standards Act (29 U.S.C. 201 *et seq.*). This clarification and limitation of the exemption previously granted (33 FR 9880, July 10, 1968) is necessary and proper in the public interest and is in accord with the remedial purpose of the Act.

(Secs. 2(a) and 4, 79 Stat. 1034, 1035; 41 U.S.C. 351, 353, and under 5 U.S.C. 301)

[46 FR 5877, Jan. 21, 1981]

§ 4.134 Contracts outside the Act's coverage.

(a) Contracts entered into by agencies other than those of the Federal Government or the District of Columbia as described in §§ 4.107-4.108 are not within the purview of the Act. Thus, the Act does not cover service contracts entered into with any agencies of Puerto Rico, the Virgin Islands, American Samoa, or Guam acting in behalf of their respective local governments. Similarly, it does not cover service contracts entered into by agencies of States or local public bodies, not acting as agents for or on behalf of the United States or the District of Columbia, even though Federal financial assistance may be provided for such contracts under Federal law or the terms and conditions specified in Federal law may govern the award and operation of the contract.

(b) Further, as already noted in §§ 4.111-4.113, the Act does not apply to Government contracts or bid specifications which do not have as their principal purpose the furnishing of services, or which call for no services to be furnished within the United States or through the use of service employees as those terms are defined in the Act. Clearly outside the Act's coverage for these reasons are such contracts as those for the purchase of tangible products which the Government needs (e.g. vehicles, office equipment, and supplies), for the logistic support of an air base in a foreign country, or for the services of a lawyer to examine the title to land. Similarly, where the Government contracts for a lease of building space for Government occupancy and the building owner furnishes general janitorial and other building services on an incidental basis through the use of service employees, the leasing of the space rather than the furnishing of the building services is the principal purpose of the contract, and the Act does not apply. However, if the contract contains a separate line item or items which requires the contractor to furnish specified levels and frequencies of janitorial, security, or other maintenance services, the requirement for such services is considered to be a separate specification the principal purpose of which is the furnishing of services, and as set forth in § 4.132, the Act would apply to such specification. Another type of contract which is outside the coverage of the Act because it is not for the principal purpose of furnishing services may be illustrated by a contract for the rental of parking space under which the Government agency is simply given a lease or license to use the contractor's real property. Such a contract is to be distinguished from contracts for the storage of vehicles which are delivered into the possession or custody of the contractor, who will provide the required services including the parking or retrieval of the vehicles.

(c) There are a number of types of contracts which, while outside the Act's coverage in the usual case, may be subject to its provisions under the conditions and circumstances of a particular procurement, because these may be such as to require a different view of the principal purpose of the contract. Thus, the ordinary contract for the recapping of tires would have as its principal purpose the manufacture and furnishing of rebuilt tires for the Government rather than the furnishing of services through the use of service employees, and thus would be outside the Act's coverage. Similarly, contracts calling for printing, reproduction, and duplicating ordinarily would appear to have as their principal purpose the furnishing in quantity of printed, reproduced or duplicated written materials rather than the furnishing of reproduction services through the use of service employees. However, in a particular case, the terms, conditions, and circumstances of the procurement may be such that the facts would show its purpose to be chiefly the furnishing of services (e.g. repair services, typesetting, photocopying, editing, etc.), and where such services require the use of service employees the contract would be subject to the Act unless excluded therefrom for some other reason.

DETERMINING AMOUNT OF CONTRACT

§ 4.140 Significance of contract amount.

As set forth in § 4.104 and in the requirements of §§ 4.6-4.7, the obligations of a contractor with respect to labor standards differ in the case of a covered and nonexempt contract, depending on whether the contract is or is not in excess of $2,500. Rules for resolving questions that may arise as to whether a contract is or is not in excess of this figure are set forth in the following sections.

§ 4.141 General criteria for measuring amount.

(a) In general, the contract amount is measured by the consideration agreed to be paid, whether in money or other valuable consideration, in return for the obligations assumed under the contract. Thus, even though a contractor, such as a wrecker entering into a contract with the Government to raze a building on a site which will remain vacant, may not be entitled to receive any money from the Government for such work under his contract or may even agree to pay the Government in return for the right to dispose of the salvaged materials, the contract will be deemed one in excess of $2,500 if the value of the property obtained by the contractor, less anything he might pay the Government, is in excess of such amount. In addition, concession contracts are considered to be contracts in excess of $2,500 if the contractor's gross receipts under the contract may exceed $2,500.

(b) All bids from the same person on the same invitation for bids will constitute a single offer, and the total award to such person will determine the amount involved for purposes of the Act. Where the procurement is made without formal advertising, in arriving at the aggregate amount involved, there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising. Therefore, if an agency procures continuing services through the issuance of monthly purchase orders, the amount of the contract for purposes of application of the Act is not measured by the amount of an individual purchase order. In such cases, if the continuing services were procured through formal advertising, the contract term would typically be for one year, and the monthly purchase orders must be grouped together to determine whether the yearly amount may exceed $2,500. However, a purchase order for services which are not continuing but are performed on a one-time or sporadic basis and which are not performed under a requirements contract, need not be equated to a yearly amount. (See § 4.142(b)). In addition, where an invitation is for services in an amount in excess of $2,500 and bidders are permitted to bid on a portion of the services not amounting to more than $2,500, the amounts of the contracts awarded separately to individual and unrelated bidders will be measured by the portions of the services covered by their respective contracts.

(c) Where a contract is issued in an amount in excess of $2,500 this amount will govern for purposes of application of the Act even though penalty deductions, deductions for prompt payment, and similar deductions may reduce the amount actually expended by the Government to $2,500 or less.

§ 4.142 Contracts in an indefinite amount.

(a) Every contract subject to this Act, (and any bid specification therefor) which is indefinite in amount is required to contain the clauses prescribed in § 4.6 for contracts in excess of $2,500, unless the contracting officer has definite knowledge in advance that the contract will not exceed $2,500 in any event.

(b) Where contracts or agreements between a Government agency and prospective purveyors of services are negotiated which provide terms and conditions under which services will be furnished through the use of service employees in response to individual purchase orders or calls, if any, which may be issued by the agency during the life of the agreement, these agreements would ordinarily constitute contracts within the intendment of the Act under principles judicially established in United Biscuit Co. v. Wirtz, 17 WH Cases 146 (C.A.D.C.), a case arising under the Walsh-Healey Public Contracts Act. Such a contract, which may be in the nature of a bilateral option contract and not obligate the Government to order any services or the contractor to furnish any, nevertheless governs any procurement of services that may be made through purchase orders or calls issued under its terms. Since the amount of the contract is indefinite, it is subject to the rule stated in paragraph (a) of this section. The amount of the contract is not determined by the amount of any individual call or purchase order.

CHANGES IN CONTRACT COVERAGE

§ 4.143 Effects of changes or extensions of contracts, generally.

(a) Sometimes an existing service contract is modified, amended, or extended in such a manner that the changed contract is considered to be a new contract for purposes of the application of the Act's provisions. The general rule with respect to such contracts is that, whenever changes affecting the labor requirements are made in the terms of the contract, the provisions of the Act and the regulations thereunder will apply to the changed contract in the same manner and to the same extent as they would to a wholly new contract. However, contract modifications or amendments (other than contract extensions) that are unrelated to the labor requirements of a contract will not be deemed to create a new contract for purposes of the Act. In addition, only significant changes related to labor requirements will be considered as creating new contracts. This limitation on the application of the Act has been found to be in accordance with the provisions of section 4(b) of the Act.

(b) Also, whenever the term of an existing contract is extended, pursuant to an option clause or otherwise, so that the contractor furnishes services over an extended period of time, rather than being granted extra time to fulfill his original commitment, the contract extension is considered to be a new contract for purposes of the application of the Act's provisions. All such "new" contracts as discussed above require the insertion of a new or revised wage determination in the contract as provided in § 4.5.

§ 4.144 Contract modifications affecting amount.

Where a contract which was originally issued in an amount not in excess of $2,500 is later modified so that its amount may exceed that figure, all the provisions of section 2(a) of the Act, and the regulations thereunder are applicable from the date of modification to the date of contract completion. In the event of such modification, the contracting officer will immediately request a wage determination from the Department of Labor and insert the required contract clauses and any wage determination issued into the contract. In the event that a contract for services subject to the Act in excess of $2,500 is modified so that it cannot exceed $2,500, compliance with the provisions of section 2(a) of the Act and the contract clauses required thereunder ceases to be an obligation of the contractor when such modification becomes effective.

§ 4.145 Extended term contracts.

(a) Sometimes service contracts are entered into for a term of years; however, their continuation in effect is subject to the appropriation by Congress of funds for each new fiscal year. In such event, for purposes of this Act, a contract shall be deemed entered into at the beginning of each new fiscal year during which the terms of the original contract are made effective by an appropriation for the purpose. In other cases a service contract, entered into for a specified term by a Government agency, may contain a provision such as an option clause under which the agency may unilaterally extend the contract for a period of the same length or other stipulated period. Since the exercise of the option results in the rendition of services for a new or different period not included in the term for which the contractor is obligated to furnish services or for which the Government is obligated to pay under the original contract in the absence of such action to extend it, the contract for the additional period is a wholly new contract with respect to application of the Act's provisions and the regulations thereunder.

(b) With respect to multi-year service contracts which are not subject to annual appropriations (for example, concession contracts which are funded through the concessionaire's sales, certain research and development contracts which are funded with so-called "no year money" or contracts awarded by instrumentalities of the United States, such as the Federal Reserve Banks, which do not receive appropriated funds), section 4(d) of the Act allows such contracts to be awarded for a period of up to five years on the condition that the multi-year contracts will be amended no less often than once every two years to incorporate any new Service Contract Act wage determination which may be applicable. Accordingly, unless the contracting agency is notified to the contrary (see § 4.4(d)), at the end of the second year and again at the end of the fourth year, etc. such contracts are treated as wholly new contracts for purposes of the application of the Act's provisions and regulations thereunder. The two-year period is considered to begin on the date that the contractor commences performance on the contract (i.e., anniversary date) rather than on the date of contract award.

PERIOD OF COVERAGE

§ 4.146 Contract obligations after award, generally.

A contractor's obligation to observe the provisions of the Act arises on the date the contractor is informed that award of the contract has been made, and not necessarily on the date of formal execution. However, the contractor is required to comply with the provisions of the Act and regulations thereunder only while the employees are performing on the contract, provided the contractor's records make clear the period of such performance. (See also § 4.179.) If employees of the contractor are required by the contract to complete certain preliminary training or testing prior to the commencement of the contract services, or if there is a phase-in period which allows the new contractor's employees to familiarize themselves with the contract work so as to provide a smooth transition between contractors, the time spent by employees undertaking such training or phase-in work is considered to be hours worked on the contract and must be compensated for even though the principal contract services may not commence until a later date.

EMPLOYEES COVERED BY THE ACT

§ 4.150 Employee coverage generally.

The Act, in section 2(b), makes it clear that its provisions apply generally to all employees engaged in performing work on a covered contract entered into by the contractor with the Federal Government, regardless of whether they are the contractor's employees or those of any subcontractor under such contract. All service employees who, on or after the date of award, are engaged in working on or in connection with the contract, either in performing the specific services called for by its terms or in performing other duties necessary to the performance of the contract, are thus subject to the Act unless a specific exemption (see §§ 4.115 et seq.) is applicable. All such employees must be paid wages at a rate not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206(a)(1)), as amended. Payment of a higher minimum monetary wage and the furnishing of fringe benefits may be required under the contract, pursuant to the provisions of sections 2 (a)(1), (2), and 4(c) of the Act.

§ 4.151 Employees covered by provision of section 2(a).

The provisions of sections 2(a) and 4(c) of the Act prescribe labor standards requirements applicable, except as otherwise specifically provided, to every contract in excess of $2,500 which is entered into by the United States or the District of Columbia for the principal purpose of furnishing services in the United States through the use of service employees. These provisions apply to all service employees engaged in the performance of such a contract or any subcontract thereunder. The Act, in section 8(b) defines the term "service employee". The general scope of the definition is considered in § 4.113(b) of this subpart.

§ 4.152 Employees subject to prevailing compensation provisions of sections 2(a) (1) and (2) and 4(c).

(a) Under section 2(a) (1) and (2) of the Act, minimum monetary wages and fringe benefits to be paid or furnished the various classes of service employees performing such contract work are determined by the Secretary of Labor or his authorized representative in accordance with prevailing rates and fringe benefits for such employees in the locality or in accordance with the rates contained in a predecessor contractor's collective bargaining agreement, as appropriate, and are required to be specified in such contracts and subcontracts thereunder. All service employees of the classes who actually perform the specific services called for by the contract (e.g., janitors performing on a contract for office cleaning; stenographers performing on a contract for stenographic reporting) are covered by the provisions specifying such minimum monetary wages and fringe benefits for such classes of service employees and must be paid not less than the applicable rate established for the classification(s) of work performed.

(b) The duties which an employee actually performs govern the classification and the rate of pay to which the employee is entitled under the applicable wage determination. Some job classifications listed in an applicable wage determination are descriptive by title and have commonly understood meanings, (e.g., janitors, security guards, pilots, etc.). In such situations, detailed position descriptions may not be included in the wage determination. However, in cases where additional descriptive information is needed to inform users of the scope of duties included in the classification, the wage determination will generally contain detailed position descriptions based on the data source relied upon for the issuance of the wage determination.

(c) Some wage determinations will list a series of classes within a job classification family, e.g., Computer Operators, Class A, B, and C, or Electronic Technicians, Class A, B, and C, or Clerk Typist, Class A and B. Generally, the lowest level listed for a job classification family is considered to be the entry level and establishment of a lower level through conformance (§ 4.6(b)(2)) is not permissible. Likewise, so-called trainee classifications are not permissible and cannot be conformed under § 4.6(b)(2). Helpers in skilled maintenance trades (e.g., electricians, machinists, automobile mechanics, etc.) whose duties constitute, in fact, separate and distinct jobs, may be conformed. However, conformance may not be used to artificially split or subdivide classifications listed in the wage determination. In other words, conforming procedures may not be used if the work which an employee performs under the contract is within the scope of any classification listed on the wage determination, regardless of job title. Subminimum rates for apprentices, student learners, and handicapped workers are permissible under the conditions discussed in § 4.6(o).

§ 4.153 Inapplicability of prevailing compensation provisions to some employees.

There may be employees used by a contractor or subcontractor in performing a service contract in excess of $2,500 which is subject to the Act, whose services, although necessary to the performance of the contract, are not subject to minimum monetary wage or fringe benefit provisions contained in the contract pursuant to section 2(a) because such employees are not directly engaged in performing the specified contract services. An example might be a laundry contractor's billing clerk performing billing work with respect to the items laundered. In all such situations, the employees who are necessary to the performance of the contract but not directly engaged in the performance of the specified contract services, are nevertheless subject to the minimum wage provision of section 2(b) (see § 4.150) requiring payment of not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act to all employees working on a covered contract, unless specifically exempt. However, in situations where minimum monetary wages and fringe benefits for a particular class or classes of service employees actually performing the services called for by the contract have not been specified in the contract because the wage and fringe benefit determination applicable to the contract has been made only for other classes of service employees who will perform the contract work, the employer will be required to pay the monetary wages and fringe benefits which may be specified for such classes of employees pursuant to the conformance procedures provided in § 4.6(b).

§ 4.154 Employees covered by sections 2(a) (3) and (4).

The safety and health standards of section 2(a)(3) and the notice requirements of section 2(a)(4) of the Act (see § 4.183) are applicable, in the absence of a specific exemption, to every service employee engaged by a contractor or subcontractor to furnish services under a contract subject to section 2(a) of the Act.

§ 4.155 Employee coverage does not depend on form of employment contract.

The Act, in section 8(b), makes it plain that the coverage of service employees depends on whether their work for the contractor or subcontractor on a covered contract is that of a service employee as defined in section 8(b) and not on any contractual relationship that may be alleged to exist between the contractor or subcontractor and such persons. In other words, any person, except those discussed in § 4.156 below, who performs work called for by a contract or that portion of a contract subject to the Act is, per se, a service employee. Thus, for example, a person's alleged status as an "owner-operator" or an "independent contractor" is immaterial in determining coverage under the Act and all such persons performing the work of service employees must be compensated in accordance with the Act's requirements.

§ 4.156 Employees in bona fide executive, administrative, or professional capacity.

The term "service employee" as defined in Section 8(b) of the Act does not include persons employed in a bona fide executive, administrative, or professional capacity as those terms are defined in 29 CFR Part 541. Employees within the definition of service employee who are employed in an executive, administrative, or professional capacity are not excluded from coverage, however, even though they are highly paid, if they fail to meet the tests set forth in 29 CFR Part 541. Thus, such employees as laboratory technicians, draftsmen, and air ambulance pilots, though they require a high level of skill to perform their duties and may meet the salary requirements of the regulations in Part 541 of this title, are ordinarily covered by the Act's provisions because they do not typically meet the other requirements of those regulations.

Subpart D—Compensation Standards

§ 4.159 General minimum wage.

The Act, in section 2(b)(1), provides generally that no contractor or subcontractor under any Federal contract subject to the Act shall pay any employee engaged in performing work on such a contract less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act. Section 2(a)(1) provides that the minimum monetary wage specified in any such contract exceeding $2,500 shall in no case be lower than this Fair Labor Standards Act minimum wage. Section 2(b)(1) is a statutory provision which applies to the contractor or subcontractor without regard to whether it is incorporated in the contract; however, §§ 4.6-4.7 provide for inclusion of its requirements in covered contracts and subcontracts. Because this statutory requirement specifies no fixed monetary wage rate and refers only to the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act, and because its application does not depend on provisions of the contract, any increase in such Fair Labor Standards Act minimum wage during the life of the contract is, on its effective date, also effective to increase the minimum wage payable under section 2(b)(1) to employees engaged in performing work on the contract. The minimum wage rate under section 6(a)(1) of the Fair Labor Standards Act is $3.10 per hour beginning January 1, 1980, and $3.35 per hour after December 31, 1980.

§ 4.160 Effect of section 6(e) of the Fair Labor Standards Act.

Contractors and subcontractors performing work on contracts subject to the Service Contract Act are required to pay all employees, including those employees who are not performing work on or in connection with such contracts, not less than the general minimum wage standard provided in section 6(a)(1) of the Fair Labor Standards Act, as amended (Pub. L. 95-151)

§ 4.161 Minimum monetary wages under contracts exceeding $2,500.

The standards established pursuant to the Act for minimum monetary wages to be paid by contractors and subcontractors under service contracts in excess of $2,500 to service employees engaged in performance of the contract or subcontract are required to be specified in the contract and in all subcontracts (see § 4.6). Pursuant to the statutory scheme provided by sections 2(a)(1) and 4(c) of the Act, every covered contract (and any bid specification therefor) which is in excess of $2,500 shall contain a provision specifying the minimum monetary wages to be paid the various classes of service employees engaged in the performance of the contract or any subcontract thereunder, as determined by the Secretary or his authorized representative in accordance with prevailing rates for such employees in the locality, or, where a collective bargaining agreement applied to the employees of a predecessor contractor, in accordance with the rates for such employees provided for in such agreement; including prospective wage increases as provided in such agreement as a result of arm's-length negotiations. In no case may such wages be lower than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. (For a detailed discussion of the application of section 4(c) of the Act, see § 4.163.) If some or all of the determined wages in a contract fall below the level of the Fair Labor Standards Act minimum by reason of a change in that rate by amendment of the law, these rates become obsolete and the employer is obligated under section 2(b)(1) of the Service Contract Act, to pay the minimum wage rate established by the amendment as of the date it becomes effective. A change in the Fair Labor Standards Act minimum by operation of law would also have the same effect on advertised specifications or negotiations for covered service contracts, i.e., it would make ineffective and would supplant any lower rate or rates included in such specifications or negotiations whether or not determined. However, unless affected by such a change in the Fair Labor Standards Act minimum wage, by contract changes necessitating the insertion of new wage provisions (see §§ 4.143-4.145 or by the requirements of section 4(c) of the Act (see § 4.163), the minimum monetary wage rate specified in the contract for each of the classes of service employees for which wage determinations have been made under section 2(a)(1) will continue to apply throughout the period of contract performance. No change in the obligation of the contractor or subcontractor with respect to minimum monetary wages will result from the mere fact that higher or lower wage rates may be determined to be prevailing for such employees in the locality after the award and before completion of the contract. Such wage determinations are effective for contracts not yet awarded, as provided in § 4.5(a).

§ 4.162 Fringe benefits under contracts exceeding $2,500.

(a) Pursuant to the statutory scheme provided by sections 2(a)(2) and 4(c) of the Act, every covered contract in excess of $2,500 shall contain a provision specifying the fringe benefits to be furnished the various classes of service employees, engaged in the performance of the contract or any subcontract thereunder, as determined by the Secretary or his authorized representative to be prevailing for such employees in the locality or, where a collective bargaining agreement applied to the employees of a predecessor contractor, the various classes of service employees engaged in the performance of the contract or any subcontract must be provided the fringe benefits, including prospective or accrued fringe benefit increases, provided for in such agreement as a result of arm's-length negotiations. (For a detailed discussion of section 4(c) of the Act, see § 4.163.) As provided by section 2(a)(2) of the Act, fringe benefits include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or other similar programs and other bona fide fringe benefits not otherwise required by Federal, State, or local law to be provided by the contractor or subcontractor.

(b) Under this provision, the fringe benefits, if any, which the contractor or subcontractor is required to furnish the service employees engaged in the performance of the contract are specified in the contract documents (see § 4.6). How the contractor may satisfy this obligation is dealt with in §§ 4.170-4.177 of this part. A change in the fringe benefits required by the contract provision will not result from the mere fact that other or additional fringe benefits are determined to be prevailing for such employees in the locality at a time subsequent to the award but before completion of the contract. Such fringe benefit determinations are effective for contracts not yet awarded (see § 4.5(a)), or in the event that changes in an existing contract requiring their insertion for prospective application have occurred (see §§ 4.143-4.145). However, none of the provisions of this subsection may be construed as altering a successor contractor's obligations under section 4(c) of the Act. (See § 4.163.)

§ 4.163 Section 4(c) of the Act.

(a) Section 4(c) of the Act provides that no "contractor or subcontractor under a contract, which succeeds a contract subject to this Act and under which substantially the same services are furnished, shall pay any service employee under such contract less than the wages and fringe benefits, including accrued wages and fringe benefits, and any prospective increases in wages and fringe benefits provided for in a collective-bargaining agreement as a result of arm's-length negotiations, to which such service employees would have been entitled if they were employed under the predecessor contract: *Provided*, That in any of the foregoing circumstances such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality." Under this provision, the successor contractor's sole obligation is to insure that all service employees are paid no less than the wages and fringe benefits to which such employees would have been entitled if employed under the predecessor's collective bargaining agreement (i.e., irrespective of whether the successor's employees were or were not employed by the predecessor contractor). The obligation of the successor contractor is limited to the wage and fringe benefit requirements of the predecessor's collective bargaining agreement and does not extend to other items such as seniority, grievance procedures, work rules, overtime, etc.

(b) *Section 4(c) is self-executing.* Under section 4(c), a successor contractor is statutorily obligated to pay no less than the wage rates and fringe benefits which the predecessor contractor paid pursuant to a collective bargaining agreement. This is a direct statutory obligation and requirement placed on the successor contractor by section 4(c) and is not contingent or dependent upon the issuance or incorporation in the contract of a wage determination based on the predecessor contractor's collective bargaining agreement. Pursuant to section 4(b) of the Act, a variation has been granted which limits the self-executing application of section 4(c) in the circumstances and under the conditions described in § 4.1b(b) of this part. It must be emphasized, however, that the variation in § 4.1b(b) is applicable only if the contracting officer has given both the incumbent (predecessor) contractor and the employees' collective bargaining representative notification at least 30 days in advance of any estimated procurement date.

(c) *Variance hearings.* The regulations and procedures for hearings pursuant to section 4(c) of the Act are contained in § 4.10 of Subpart A and Part 6 of this title. If, as the result of such hearing, some or all of the wage rate and/or fringe benefit provisions of a predecessor contractor's collective bargaining agreement are found to be substantially at variance with the wage rates and/or fringe benefits prevailing in the locality, the Administrator will cause a new wage determination to be issued in accordance with the decision of the Administrative Law Judge or the Secretary. Since "it was the clear intent of Congress that any revised wage determinations resulting from a section 4(c) proceeding were to have validity with respect to the procurement involved" (53 Comp. Gen. 401, 402, 1973), the solicitation, or the contract if already awarded, must be amended to incorporate the newly issued wage determination. Such new wage determination shall be made applicable to the contract as of the date of the Administrative Law Judge's decision or as of the date of the decision of the Secretary. The legislative history of the 1972 Amendments makes clear that the collectively bargained "wages and fringe benefits shall continue to be honored * * * unless and until the Secretary finds, after a hearing, that such wages and fringe benefits are substantially at variance with those prevailing in the locality for like services" (S. Rept. 92-1131, 92nd Cong., 2d Sess. 5). Thus, variance decisions do not have application retroactive to the commencement of the contract.

(d) *Sections 2(a) and 4(c) must be read in conjunction.* The Senate report accompanying the bill which amended the Act in 1972 states that "Sections 2(a)(1), 2(a)(2), and 4(c) must be read in harmony to reflect the statutory scheme." (S. Rept. 92-1131, 92nd Cong., 2nd Sess. 4.) Therefore, since section 4(c) refers only to the predecessor contractor's collective bargaining agreement, the reference to collective bargaining agreements in sections 2(a)(1) and 2(a)(2) can only be read to mean a predecessor contractor's collective bargaining agreement. The fact that a successor contractor may have its own collective bargaining agreement does not negate the clear mandate of the statute that the wages and fringe benefits called for by the predecessor contractor's collective bargaining agreement shall be the minimum payable under a new (successor) contract. 48 Comp. Gen. 22, 23-24 (1968). In addition, because section 2(a) only applies to covered contracts in excess of $2,500, the requirements of section 4(c) likewise apply only to successor contracts which may be in excess of $2,500. However, if the successor contract is in excess of $2,500, section 4(c) applies regardless of the amount of the predecessor contract. (See §§ 4.141-4.142 for determining contract amount.)

(e) *The operative words of section 4(c) refer to "contract" not "contractor".* Section 4(c) begins with the language, "[n]o contractor or subcontractor under a *contract, which succeeds a contract* subject to this Act" (emphasis supplied). Thus, the statute is applicable by its terms to a successor contract without regard to whether the successor contractor was also the predecessor contractor. A contractor may become its own successor because it was the successful bidder on a recompetition of an existing contract, or because the contracting agency exercises an option or otherwise extends the term of the existing contract, etc. (See §§ 4.143-4.145). Further, since sections 2(a) and 4(c) must be read in harmony to reflect the statutory scheme, it is clear that the provisions of section 4(c) apply whenever the Act or the regulations require that a new wage determination be incorporated into the contract (53 Comp. Gen. 401, 404-6 (1973)).

(f) *Collective bargaining agreement must be applicable to work performed on the predecessor contract.* Section 4(c) will be operative only if the employees who worked on the predecessor contract were actually paid in accordance with the wage and fringe benefit provisions of a predecessor contractor's collective bargaining agreement. Thus, for example, section 4(c) would not apply if the predecessor contractor entered into a collective bargaining agreement for the first time, which did not become effective until after the expiration of the predecessor contract. Likewise, the requirements of section 4(c) would not apply if the predecessor contractor's collective bargaining agreement applied only to other employees of the firm and not to the employees working on the contract.

(g) *Contract reconfigurations.* As a result of changing priorities, mission requirements, or other considerations, contracting agencies may decide to restructure their support contracts. Thus, specific contract requirements from one contract may be broken out and placed in a new contract or combined with requirements from other contracts into a consolidated contract. However, the protections afforded service employees under section 4(c) are not lost or negated because of such contract reconfigurations, and the predecessor contractor's collectively bargained rates follow identifiable contract work requirements into new or consolidated contracts.

(h) *Interruption of contract services.* Other than the requirement that substantially the same services be furnished, the requirement for arm's-length negotiations and the provision for variance hearings, the Act does not impose any other restrictions on the application of section 4(c). Thus, the application of section 4(c) is not negated because the contracting authority may change and the successor contract is awarded by a different contracting agency. Also, there is no requirement that the successor contract commence immediately after the completion or termination of the predecessor contract, and an interruption of contract services does not negate the application of section 4(c). Contract services may be interrupted because the Government facility is temporarily closed for renovation, or because a predecessor defaulted on the contract or because a bid protest has halted a contract award requiring the Government to perform the services with its own employees. In all such cases, the requirements of section 4(c) would apply to any successor contract which may be awarded after the temporary interruption or hiatus. The basic principle in all of the preceding examples is that successorship provisions of section 4(c) apply to the full term successor contract. Therefore, temporary interim contracts, which allow a contracting agency sufficient time to solicit bids for a full term contract, also do not negate the application of section 4(c) to a full term successor contract.

(i) *Place of performance.* The successorship requirements of section 4(c) apply to all contracts for substantially the same services as were furnished under the predecessor contract. The Act does not distinguish between successor contracts performed at the same Government installation and successor contracts performed at the location of a successful bidder, and the requirements of section 4(c) apply equally to both types of contracts.

(j) *Interpretation of wage and fringe benefit provisions of wage determinations issued pursuant to sections 2(a) and 4(c).* Wage determinations which are issued for successor contracts subject to section 4(c) are intended to accurately reflect the rates and fringe benefits set forth in the predecessor's collective bargaining agreement. However, failure to include in the wage determination any job classification, wage rate, or fringe benefit encompassed in the collective bargaining agreement does not relieve the successor contractor of the statutory requirement to comply at a minimum with the terms of the collective bargaining agreement insofar as wages and fringe benefits are concerned. Since the successor's obligations are governed by the terms of the collective bargaining agreement, any interpretation of the wage and fringe benefit provisions of the wage determination must be based on the intent of the parties to the collective bargaining agreement to the extent that such interpretation is not violative of law. Therefore, some of the principles discussed in §§ 4.170-4.177 regarding specific interpretations of the fringe benefit provisions of prevailing wage determinations may not be applicable to wage determinations issued pursuant to section 4(c). As provided in section 2(a)(2), a contractor may satisfy its fringe benefit obligations under any wage determination "by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash" in accordance with the rules and regulations set forth in § 4.177 of this subpart.

(k) No provision of this section shall be construed as permitting a successor contractor to pay its employees less than the wages and fringe benefits to which such employees would have been entitled under the predecessor contractor's collective bargaining agreement. Thus, some of the principles discussed in § 4.167 may not be applicable in section 4(c) successorship situations. For example, if the predecessor contractor's collective bargaining agreement did not provide for the deduction from employees' wages of the reasonable cost or fair value for providing board, lodging, or other facilities, then the successor also may not include such costs as part of the applicable minimum wage specified in the wage determination. Likewise, unless the predecessor contractor's agreement allowed a tip credit (§ 4.6(q)), the successor contractor may not take a tip credit toward satisfying the minimum wage requirements under sections 2(a)(1) and 4(c).

COMPLIANCE WITH COMPENSATION STANDARDS

§ 4.164 [Reserved]

§ 4.165 Wage payments and fringe benefits—in general.

(a)(1) Monetary wages specified under the Act shall be paid to the employees to whom they are due promptly and in no event later than one pay period following the end of the pay period in which they are earned. No deduction, rebate, or refund is permitted, except as hereinafter stated. The same rules apply to cash payments authorized to be paid with the statutory monetary wages as equivalents of determined fringe benefits (see § 4.177).

(2) The Act makes no distinction, with respect to its compensation provisions, between temporary, part-time, and full-time employees, and the wage and fringe benefit determinations apply, in the absence of an express limitation, equally to all such service employees engaged in work subject to the Act's provisions. (See § 4.176 regarding fringe benefit payments to temporary and part-time employees.)

(b) The Act does not prescribe the length of the pay period. However, for purposes of administration of the Act, and to conform with practices required under other statutes that may be applicable to the employment, wages and hours worked must be calculated on the basis of a fixed and regularly recurring workweek of seven consecutive 24-hour workday periods, and the records must be kept on this basis. It is appropriate to use this workweek for the pay period. A biweekly or semimonthly, pay period may, however, be used if advance notification is given to the affected employees. A pay period longer than semi-monthly is not recognized as appropriate for service employees and wage payments at greater intervals will not be considered as constituting proper payments in compliance with the Act.

(c) The prevailing rate established by a wage determination under the Act is a minimum rate. A contractor is not precluded from paying wage rates in excess of those determined to be prevailing in the particular locality.

Nor does the Act affect or require the changing of any provisions of union contracts specifying higher monetary wages or fringe benefits than those contained in an applicable determination. However, if an applicable wage determination contains a wage or fringe benefit provision for a class of service employees which is higher than that specified in an existing union agreement, the determination's provision must be observed for any work performed on a contract subject to that determination.

§ 4.166 Wage payments—unit of payment.

The standard by which monetary wage payments are measured under the Act is the wage rate per hour. An hourly wage rate is not, however, the only unit for payment of wages that may be used for employees subject to the Act. Employees may be paid on a daily, weekly, or other time basis, or by piece or task rates, so long as the measure of work and compensation used, when translated or reduced by computation to an hourly basis each workweek, will provide a rate per hour that will fulfill the statutory requirement. Whatever system of payment is used, however, must ensure that each hour of work in performance of the contract is compensated at not less than the required minimum rate. Failure to pay for certain hours at the required rate cannot be transformed into compliance with the Act by reallocating portions of payments made for other hours which are in excess of the specified minimum.

§ 4.167 Wage payments—Medium of payment.

The wage payment requirements under the Act for monetary wages specified under its provisions will be satisfied by the timely payment of such wages to the employee either in cash or negotiable instrument payable at par. Such payment must be made finally and unconditionally and "free and clear." Scrip, tokens, credit cards, "dope checks", coupons, salvage material, and similar devices which permit the employer to retain and prevent the employee from acquiring control of money due for the work until some time after the pay day for the period in which it was earned, are not proper mediums of payment under the Act. If, as is permissible, they are used as a convenient device for measuring earnings or allowable deductions during a single pay period, the employee cannot be charged with the loss or destruction of any of them and the employer may not, because the employee has not actually redeemed them, credit itself with any which remain outstanding on the pay day in determining whether it has met the requirements of the Act. The employer may not include the cost of fringe benefits or equivalents furnished as required under section 2(a)(2) of the Act, as a credit toward the monetary wages it is required to pay under section 2(a)(1) or 2(b) of the Act (see § 4.170). However, the employer may generally include, as a part of the applicable minimum wage which it is required to pay under the Act, the reasonable cost or fair value, as determined by the Administrator, of furnishing an employee with "board, lodging, or other facilities," as defined in Part 531 of this title, in situations where such facilities are customarily furnished to employees, for the convenience of the employees, not primarily for the benefit of the employer, and the employees' acceptance of them is voluntary and uncoerced. The determination of reasonable cost or fair value will be in accordance with the Administrator's regulations under the Fair Labor Standards Act, contained in such Part 531 of this title. While employment on contracts subject to the Act would not ordinarily involve situations in which service employees would receive tips from third persons, the treatment of tips for wage purposes in the situations where this may occur should be understood. For purposes of this Act, tips may generally be included in wages in accordance with the regulations under the Fair Labor Standards Act, contained in Part 531 (See also § 4.6(q).) The general rule under that Act is that the amount paid a tipped employee by his employer is deemed to be increased on account of tips by an amount determined by the employer, not in excess of 40 percent of the minimum wage applicable under section 6 of that Act, effective January 1, 1980. Thus, the tip credit taken by an employer subject to the Service Contract Act may not exceed $1.34 per hour after December 31, 1980. (See § 4.163(k) for exceptions in section 4(c) situations.) In no event shall the sum credited be in excess of the value of tips actually received by the employee.

§ 4.168 Wage payments—deductions from wages paid.

(a) The wage requirements of the Act will not be met where unauthorized deductions, rebates, or refunds reduce the wage payment made to the employee below the minimum amounts required under the provisions of the Act and the regulations thereunder, or where the employee fails to receive such amounts free and clear because he "kicks back" directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to him. Authorized deductions are limited to those required by law, such as taxes payable by employees required to be withheld by the employer and amounts due employees which the employer is required by court order to pay to another; deductions allowable for the reasonable cost or fair value of board, lodging, and facilities furnished as set forth in § 4.167; and deductions of amounts which are authorized to be paid to third persons for the employee's account and benefit pursuant to his voluntary assignment or order or a collective bargaining agreement with bona fide representatives of employees which is applicable to the employer. Deductions for amounts paid to third persons on the employee's account which are not so authorized or are contrary to law or from which the contractor, subcontractor or any affiliated person derives any payment, rebate, commission, profit, or benefit directly or indirectly, may not be made if they cut into the wage required to be paid under the Act. The principles applied in determining the permissibility of deductions for payments made to third persons are explained in more detail in §§ 531.38 - 531.40 of this title.

(b) *Cost of maintaining and furnishing uniforms.* If the employees are required to wear uniforms either by the employer, the nature of the job, or the Government contract, then the cost of furnishing and maintaining the uniforms is deemed to be a business expense of the employer and such cost may not be borne by the employees to the extent that to do so would reduce the employee's compensation below that required by the Act. Since it may be administratively difficult and burdensome for employers to determine the actual cost incurred by all employees for maintaining their own uniforms, payment in accordance with the following standards is considered sufficient for the contractor to satisfy its wage obligations under the Act:

(1) The contractor furnishes all employees with an adequate number of uniforms without cost to the employees or reimburses employees for the actual cost of the uniforms. (2) Where uniform cleaning and maintenance is made the responsibility of the employee, the contractor reimburses all employees for such cleaning and maintenance at the rate of $3.10 a week (or 62 cents a day) as of January 1, 1980 and of $3.35 a week (or 67 cents a day) as of January 1, 1981. Since employees are generally required to wear a clean uniform each day regardless of the number of hours the employee may work that day, the preceding weekly amounts generally may be reduced to the stated daily equivalent but not to an hourly equivalent. A contractor may reimburse employees at a different rate if the contractor furnishes affirmative proof as to the actual cost to the employees of maintaining their uniforms or if a different rate is provided for in a bona fide collective bargaining agreement covering the employees working on the contract.

(c) Stipends, allowances or other payments made directly to an employee by a party other than the employer (such as a stipend for training paid by the Veterans Administration) are not part of "wages" and the employer may not claim credit for such payments toward its monetary obligations under the Act.

§ 4.169 Wage payments—work subject to different rates.

If an employee during a workweek works in different capacities in the performance of the contract and two or more rates of compensation under section 2 of the Act are applicable to the classes of work which he or she performs, the employee must be paid the highest of such rates for all hours worked in the workweek unless it appears from the employer's records or other affirmative proof which of such hours were included in the periods spent in each class of work. The rule is the same where such an employee is employed for a portion of the workweek in work not subject to the Act, for which compensation at a lower rate would be proper if the employer by his records or other affirmative proof, segregated the worktime thus spent.

§ 4.170 Furnishing fringe benefits or equivalents.

(a) *General.* Fringe benefits required under the Act shall be furnished, separate from and in addition to the specified monetary wages, by the contractor or subcontractor to the employees engaged in performance of the contract, as specified in the determination of the Secretary or his authorized representative and prescribed in the contract documents. Section 2(a)(2) of the Act provides that the obligation to furnish the specified benefits "may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the Secretary." The governing rules and regulations for furnishing such equivalents are set forth in § 4.177 of this subpart. An employer cannot offset an amount of monetary wages paid in excess of the wages required under the determination in order to satisfy his fringe benefit obligations under the Act, and must keep appropriate records separately showing amounts paid for wages and amounts paid for fringe benefits.

(b) *Meeting the requirement, in general.* The various fringe benefits listed in the Act and in § 4.162(a) are illustrative of those which may be found to be prevailing for service employees in a particular locality. The benefits which an employer will be required to furnish employees performing on a particular contract will be specified in the contract documents. A contractor may dispose of certain of the fringe benefit obligations which may be required by an applicable fringe benefit determination, such as pension, retirement, or health insurance, by irrevocably paying the specified contributions for fringe benefits to an independent trustee or other third person pursuant to an existing "bona fide" fund, plan, or program on behalf of employees engaged in work subject to the Act's provisions. Where such a plan or fund does not exist, a contractor must discharge his obligation relating to fringe benefits by furnishing either an equivalent combination of "bona fide" fringe benefits or by making equivalent payments in cash to the employee, in accordance with the regulations in § 4.177.

§ 4.171 "Bona fide" fringe benefits.

(a) To be considered a "bona fide" fringe benefit for purposes of the Act, a fringe benefit plan, fund, or program must constitute a legally enforceable obligation which meets the following criteria:

(1) The provisions of a plan, fund, or program adopted by the contractor, or by contract as a result of collective bargaining, must be specified in writing, and must be communicated in writing to the affected employees. Contributions must be made pursuant to the terms of such plan, fund, or program. The plan may be either contractor-financed or a joint contractor-employee contributory plan. However, any contributions made by employees must be voluntary, and if such contributions are made through payroll deductions, such deductions must be made in accordance with § 4.168. No contribution toward fringe benefits made by the employees themselves, or fringe benefits provided from monies deducted from the employee's wages may be included or used by an employer in satisfying any part of any fringe benefit obligation under the Act.

(2) The primary purpose of the plan must be to provide systematically for

the payment of benefits to employees on account of death, disability, advanced age, retirement, illness, medical expenses, hospitalization, supplemental unemployment benefits, and the like.

(3) The plan must contain a definite formula for determining the amount to be contributed by the contractor and a definite formula for determining the benefits for each of the employees participating in the plan or the benefits provided under the plan must be specified or definitely determinable on an actuarial basis.

(4) Except as provided in paragraph (b), the contractor's contributions must be paid irrevocably to a trustee or other third person pursuant to an insurance agreement, trust or other funded arrangement. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the contractor be able to recapture any of the contributions paid in nor in any way divert the funds to its own use or benefit.

(5) Benefit plans or trusts of the types listed in 26 U.S.C. 401(a) must be approved by the Internal Revenue Service as satisfying the requirements of section 401(a) of the Internal Revenue Code and meet the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq. and regulations thereunder.

(6) It should also be noted that such plans must meet certain other criteria as set forth in § 778.215 of 29 CFR 778 in order for any contributions to be excluded from computation of the regular rate of pay for overtime purposes under the Fair Labor Standards Act (§§ 4.180-4.182).

(b)(1) Unfunded self-insured fringe benefit plans (other than fringe benefits such as vacations and holidays which by their nature are normally unfunded) under which contractors allegedly make "out of pocket" payments to provide benefits as expenses may arise, rather than making irrevocable contributions to a trust or other funded arrangement as required under § 4.171(a)(4), are not considered "bona fide" plans or equivalent benefits for purposes of the Act.

(2) A contractor may request approval by the Administrator of an unfunded self-insured plan in order to allow credit for payments under the plan to meet the fringe benefit requirements of the Act. In considering whether such a plan is bona fide, the Administrator will consider such factors as whether it could be reasonably anticipated to provide the prescribed benefits, whether it represents a legally enforceable commitment to provide such benefits, whether it is carried out under a financially responsible program, and whether the plan has been communicated to the employees in writing. The Administrator in his/her discretion may direct that assets be set aside and preserved in an escrow account or that other protections be afforded to meet the plan's future obligation.

(c) No benefit required by any other Federal law or by any State or local law, such as unemployment compensation, workers' compensation, or social security, is a "bona fide" fringe benefit for purposes of the Act.

(d) The furnishing to an employee of board, lodging, or other facilities under the circumstances described in § 4.167, the cost or value of which is creditable toward the monetary wages specified under the Act, may not be used to offset any fringe benefit obligations, as such items and facilities are not fringe benefits or equivalent benefits for purposes of the Act.

(e) The furnishing of facilities which are primarily for the benefit or convenience of the contractor or the cost of which is properly a business expense of the contractor is not the furnishing of a "bona fide" fringe benefit or equivalent benefit or the payment of wages. This would be true of such items, for example, as relocation expenses, travel and transportation expenses incident to employment, incentive or suggestion awards, and recruitment bonuses, as well as tools and other materials and services incidental to the employer's performance of the contract and the carrying on of his business, and the cost of furnishing, laundering, and maintaining uniforms and/or related apparel or equipment where employees are required by the contractor, by the contractor's Government contract, by law, or by the nature of the work to wear such items. See also § 4.168.

(f) Contributions by contractors for such items as social functions or parties for employees, flowers, cards, or gifts on employee birthdays, anniversaries, etc. (sunshine funds), employee rest or recreation rooms, paid coffee breaks, magazine subscriptions, and professional association or club dues, may not be used to offset any wages or fringe benefits specified in the contract, as such items are not "bona fide" wages or fringe benefits or equivalent benefits for purposes of the Act.

§ 4.172 Meeting requirements for particular fringe benefits—in general.

Where a fringe benefit determination specifies the amount of the employer's contribution to provide the benefit, the amount specified is the actual minimum cash amount that must be provided by the employer for the employee. No deduction from the specified amount may be made to cover any administrative costs which may be incurred by the contractor in providing the benefits, as such costs are properly a business expense of the employer. If prevailing fringe benefits for insurance or retirement are determined in a stated amount, and the employer provides such benefits through contribution in a lesser amount, he will be required to furnish the employee with the difference between the amount stated in the determination and the actual cost of the benefits which he provides. Unless otherwise specified in the particular wage determination, such as one reflecting collectively bargained fringe benefit requirements, issued pursuant to Section 4(c) of the Act, every employee performing on a covered contract must be furnished the fringe benefits required by that determination for all hours spent working on that contract up to a maximum of 40 hours per week and 2,080 (i.e., 52 weeks of 40 hours each) per year, as these are the typical number of nonovertime hours of work in a week, and in a year, respectively. Since the Act's fringe benefit requirements are applicable on a contract-by-contract basis, employees performing on more than one contract subject to the Act must be furnished the full amount of fringe benefits to which they are entitled under each contract and applicable wage determination. Where a fringe benefit determination has been made requiring employer contributions for a specified fringe benefit in a stated amount per hour, a contractor employing employees part of the time on contract work and part of the time on other work, may only credit against the hourly amount required for the hours spent on the contract work, the corresponding proportionate part of a weekly, monthly, or other amount contributed by him for such fringe benefits or equivalent benefits for such employees. If , for example, the determination requires health and welfare benefits in the amount of 30 cents an hour and the employer provides hospitalization insurance for such employees at a cost of $10.00 a week, the employer may credit 25 cents an hour ($10.00 ÷ 40) toward his fringe benefit obligation for such employees. If an employee works 25 hours on the contract work and 15 hours on other work, the employer cannot allocate the entire $10.00 to the 25 hours spent on contract work and take credit for 30 cents per hour in that manner, but must spread the cost over the full forty hours.

§ 4.173 Meeting requirements for vacation fringe benefits.

(a) *Determining length of service for vacation eligibility.* It has been found that for many types of service contracts performed at Federal facilities a successor contractor will utilize the employees of the previous contractor in the performance of the contract. The employees typically work at the same location providing the same services to the same clientele over a period of years, with periodic, often annual, changes of employer. The incumbent contractor, when bidding on a contract, must consider his liability for vacation benefits for those workers in his employ. If prospective contractors who plan to employ the same personnel were not required to furnish these employees with the same prevailing vacation benefits, it would place the incumbent contractor at a distinct competitive disadvantage as well as denying such employees entitlement to prevailing vacation benefits.

(1) Accordingly, most vacation fringe benefit determinations issued under the Act require an employer to furnish to employees working on the contract a specified amount of paid vacation upon completion of a specified length of service with a contractor or successor. This requirement may be stated in the determination, for example, as "one week paid vacation after one year of service with a contractor or successor" or by a determination which calls for "one week's paid vacation after one year of service". Unless specified otherwise in an applicable fringe benefit determination, an employer must take the following two factors into consideration in determining when an employee has completed the required length of service to be eligible for vacation benefits:

(i) The total length of time spent by an employee in any capacity in the continuous service of the present (successor) contractor, including both the time spent in performing on regular commercial work and the time spent in performing on the Government contract itself, and

(ii) Where applicable, the total length of time spent in any capacity as an employee in the continuous service of any predecessor contractor(s) who carried out similar contract functions at the same Federal facility.

(2) The application of these principles may be illustrated by the example given above of a fringe benefit determination calling for "one week paid vacation after one year of service with a contractor or successor". In that example, if a contractor has an employee who has worked for him for 18 months on regular commercial work and only for 6 months on a Government service contract, that employee would be eligible for the one week vacation since his total service with the employer adds up to more than 1 year. Similarly, if a contractor has an employee who worked for 16 months under a janitorial service contract at a particular Federal base for two different predecessor contractors, and only 8 months with the present employer, that employee would also be considered as meeting the "after one year of service" test and would thus be eligible for the specified vacation.

(3) The "contractor or successor" requirement set forth in paragraph (a)(1) of this section is not affected by the fact that a different contracting agency may have contracted for the services previously or by the agency's dividing and/or combining the contract services. However, prior service as a Federal employee is not counted toward an employee's eligibility for vacation benefits under fringe benefit determinations issued pursuant to the Act.

(4) Some fringe benefit determinations may require an employer to furnish a specified amount of paid vacation upon completion of a specified length of service *with the employer*, for example, "one week paid vacation after one year of service with an employer". Under such determinations, only the time spent in performing on commercial work and on Government contract work in the employment of the present contractor need be considered in computing the length of service for purposes of determining vacation eligibility.

(5) Whether or not the predecessor contract(s) was covered by a fringe benefit determination is immaterial in determining whether the one year of service test has been met. This qualification refers to work performed before, as well as after, an applicable fringe benefit determination is incorporated into a contract. Also, the fact that the labor standards in predecessor service contract(s) were only those required under the Fair Labor Standards Act has no effect on the applicable fringe benefit determination contained in a current contract.

(b) *Eligibility requirement—continuous service.* Under the principles set forth above, if an employee's total length of service adds up to at least one year, the employee is eligible for vacation with pay. However, such service must have been rendered continuously for a period of not less than one year for vacation eligibility. The term "continuous service" does not require the combination of two entirely separate periods of employment. Whether or not there is a break in the continuity of service so as to make an employee ineligible for a vacation benefit is dependent upon all the facts in the particular case. No fixed time period has been established for determining whether an employee has a break in service. Rather, as illustrated below, the reason(s) for an employee's absence from work is the primary factor in determining whether a break in service occurred.

(1) In cases where employees have been granted leave with or without pay by their employer, or are otherwise absent with permission for such reasons as sickness or injury, or otherwise perform no work on the contract because of reasons beyond their control, there would not be a break in service. Likewise, the absence from work for a few days, with or without notice, does not constitute a break in service, without a formal termination of employment. The following specific examples are illustrative situations where it has been determined that a break in service did not occur:

(i) An employee absent for five months due to illness but employed continuously for three years.

(ii) A strike after which employees returned to work.

(iii) An interim period of three months between contracts caused by delays in the procurement process during which time personnel hired directly by the Government performed the necessary services. However, the successor contractor in this case was not held liable for vacation benefits for those employees who had anniversary dates of employment during the interim period because no employment relationship existed during such period.

(iv) A mess hall closed three months for renovation. Contractor employees were considered to be on temporary layoff during the renovation period and did not have a break in service.

(2) Where an employee quits, is fired for cause, or is otherwise terminated (except for temporary layoffs), there would be a break in service even if the employee were rehired at a later date. However, an employee may not be discharged and rehired as a subterfuge to evade the vacation requirement.

(c) *Vesting and payment of vacation benefits.* (1) In the example given in paragraph (a)(1) of this section of a fringe benefit determination calling for "one week paid vacation after 1 year of service with a contractor or successor", an employee who renders the "one year of service" continuously becomes eligible for the "one week paid vacation" (i.e., 40 hours of paid vacation, unless otherwise specified in an applicable wage determination) upon his anniversary date of employment and upon each succeeding anniversary date thereafter. However, there is no accrual or vesting of vacation eligibility before the employee's anniversary date of employment, and no segment of time smaller than one year need be considered in computing the employer's vacation liability, unless specifically provided for in a particular fringe benefit determination. For example, an employee who has worked 13 months for an employer subject to such stipulations and is separated without receiving any vacation benefit is entitled only to one full week's (40 hours) paid vacation. He would not be entitled to the additional fraction of one-twelfth of one week's paid vacation for the month he worked in the second year unless otherwise stated in the applicable wage determination. An employee who has not met the "one year of service" requirement would not be entitled to any portion of the "one week paid vacation".

(2) Eligibility for vacation benefits specified in a particular wage determination is based on completion of the stated period of past service. The individual employee's anniversary date (and each annual anniversary date of employment thereafter) is the reference point for vesting of vacation eligibility, but does not necessarily mean that the employee must be given the vacation or paid for it on the date on which it is vested. The vacation may be scheduled according to a reasonable plan mutually agreed to and communicated to the employees. A "reasonable" plan may be interpreted to be a plan which allows the employer to maintain uninterrupted contract services but allows the employee some choice, by seniority or similar factor,

in the scheduling of vacations. However, the required vacation must be given or payment made in lieu thereof before the next anniversary date, before completion of the current contract, or before the employee terminates employment, whichever occurs first.

(d) *Contractor liability for vacation benefits.* (1) The liability for an employee's vacation is not prorated among contractors unless specifically provided for under a particular fringe benefit determination. The contractor by whom a person is employed at the time the vacation right vests, i.e., on the employee's anniversary date of employment, must provide the full benefit required by the determination which is applicable on that date. For example, an employee, who had not previously performed similar contract work at the same facility, was first hired by a predecessor contractor on July 1, 1978. July 1 is the employee's anniversary date. The predecessor's contract ended June 30, 1979, but the employee continued working on the contract for the successor. Since the employee did not have an anniversary date of employment during the predecessor's contract, the predecessor would not have any vacation liability with respect to this employee. However, on July 1, 1979 the employee's entitlement to the full vacation benefit vested and the successor contractor would be liable for the full amount of the employee's vacation benefit.

(2) The requirements for furnishing data relative to employee hiring dates in situations where such employees worked for "predecessor" contractors are set forth in § 4.6. However, a contractor is not relieved from any obligation to provide vacation benefits because of any difficulty in obtaining such data.

(e) *Rate applicable to computation of vacation benefits.* (1) If an applicable wage determination requires that the hourly wage rate be increased during the period of the contract, the rate applicable to the computation of any required vacation benefits is the hourly rate in effect in the workweek in which the actual paid vacation is provided or the equivalent is paid, as the case may be, and would not be the average of the two hourly rates. This rule would not apply to situations where a wage determination specified the method of computation and the rate to be used.

(2) As set forth in § 4.172, unless specified otherwise in an applicable fringe benefit determination, service employees must be furnished the required amount of fringe benefits for all hours paid for up to a maximum of 40 hours per week and 2,080 hours per year. Thus, an employee on paid vacation leave would accrue and must be compensated for any other applicable fringe benefits specified in the fringe benefit determination, and if any of the other benefits are furnished in the form of cash equivalents, such equivalents must be included with the applicable hourly wage rate in computing vacation benefits or a cash equivalent therefor. The rules and regulations for computing cash equivalents are set forth in § 4.177.

[46 FR 4337, Jan. 16, 1981; 46 FR 11285, Feb. 6, 1981]

§ 4.174 Meeting requirements for holiday fringe benefits.

(a) *Determining eligibility for holiday benefits—in general.* (1) Most fringe benefit determinations list a specific number of named holidays for which payment is required. Unless specified otherwise in an applicable determination, an employee who performs any work during the workweek in which a named holiday occurs is entitled to the holiday benefit, regardless of whether the named holiday falls on a Sunday, another day during the workweek on which the employee is not normally scheduled to work, or on the employee's day off. In addition, holiday benefits cannot be denied because the employee has not been employed by the contractor for a designated period prior to the named holiday or because the employee did not work the day before or the day after the holiday, unless such qualifications are specifically included in the determination.

(2) An employee who performs no work during the workweek in which a named holiday occurs is generally not entitled to the holiday benefit. Howev-

er, an employee who performs no work during the workweek because he is on paid vacation or sick leave in accordance with the terms of the applicable fringe benefit determination is entitled to holiday pay or another day off with pay to substitute for the named holiday. In addition, an employee who performs no work during the workweek because of a layoff does not forfeit his entitlement to holiday benefits if the layoff is merely a subterfuge by the contractor to avoid the payment of such benefits.

(3) The obligation to furnish holiday pay for the named holiday may be discharged if the contractor furnishes another day off with pay in accordance with a plan communicated to the employees involved. However, in such instances the holidays named in the fringe benefit determination are the reference points for determining whether an employee is eligible to receive holiday benefits. In other words, if an employee worked in a workweek in which a listed holiday occurred, the employee is entitled to pay for that holiday. Some determinations may provide for a specific number of holidays without naming them. In such instances the contractor is free to select the holidays to be taken in accordance with a plan communicated to the employees involved, and the agreed-upon holidays are the reference points for determining whether an employee is eligible to receive holiday benefits.

(b) *Determining eligibility for holiday benefits—newly hired employees.* The contractor generally is not required to compensate a newly hired employee for the holiday occurring prior to the hiring of the employee. However, in the one situation where a named holiday falls in the first week of a contract, all employees who work during the first week would be entitled to holiday pay for that day. For example, if a contract to provide services for the period January 1 through December 31 contained a fringe benefit determination listing New Year's Day as a named holiday, and if New Year's Day were officially celebrated on January 2 in the year in question because January 1 fell on a Sunday, employees hired to begin work on January 3 would be entitled to holiday pay for New Year's Day.

(c) *Payment of holiday benefits.*

(1) A full-time employee who is eligible to receive payment for a named holiday must receive a full day's pay up to 8 hours unless a different standard is used in the fringe benefit determination, such as one reflecting collectively bargained holiday benefit requirements issued pursuant to Section 4(c) of the Act or a different historic practice in an industry or locality. Thus, for example, a contractor must furnish 7 hours of holiday pay to a full-time employee whose scheduled workday consists of 7 hours. An employee whose scheduled workday is 10 hours would be entitled to a holiday payment of 8 hours unless a different standard is used in the determination. As discussed in § 4.172, such holiday pay must include the full amount of other fringe benefits to which the employee is entitled.

(2) Unless a different standard is used in the wage determination, a full-time employee who works on the day designated as a holiday must be paid, in addition to the amount he ordinarily would be entitled to for that day's work, the cash equivalent of a full-day's pay up to 8 hours or be furnished another day off with pay.

(3) If the fringe benefit determination lists the employee's birthday as a paid holiday and that day coincides with another listed holiday, the contractor may discharge his obligation to furnish payment for the second holiday by either substituting another day off with pay with the consent of the employee, furnishing holiday benefits of an extra day's pay, or if the employee works on the holiday in question, furnish holiday benefits of two extra days' pay.

(4) As stated in paragraph (a)(1) of this section, an employee's entitlement to holiday pay fully vests by working in the workweek in which the named holiday occurs. Accordingly, any employee who is terminated before receiving the full amount of holiday benefits due him must be paid the holiday benefits as a final cash payment.

(5) The rules and regulations for furnishing holiday pay to temporary and

part-time employees are discussed in § 4.176.

(6) The rules and regulations for furnishing equivalent fringe benefits or cash equivalents in lieu of holiday pay are discussed in § 4.177.

§ 4.175 Meeting requirements for health, welfare, and/or pension benefits.

(a) *Determining the required amount of benefits.* (1) Most fringe benefit determinations containing health and welfare and/or pension requirements specify a fixed payment per hour on behalf of each service employee. These payments are usually also stated as weekly or monthly amounts. As set forth in § 4.172, unless specified otherwise in the applicable determination such payments are due for all hours paid for, including paid vacation, sick leave, and holiday hours, up to a maximum of 40 hours per week and 2,080 hours per year on each contract. The application of this rule can be illustrated by the following examples:

(i) An employee who works 4 days a week, 10 hours a day is entitled to 40 hours of health and welfare and/or pension fringe benefits. If an employee works 3 days a week, 12 hours a day, then such employee is entitled to 36 hours of these benefits.

(ii) An employee who works 32 hours in a workweek and also receives 8 hours of holiday pay is entitled to the maximum of 40 hours of health and welfare and/or pension payments in that workweek. If the employee works more than 32 hours and also received 8 hours of holiday pay, the employee is still only entitled to the maximum of 40 hours of health and welfare and/or pension payments.

(iii) If an employee is off work for two weeks on vacation and received 80 hours of vacation pay, the employee must also receive payment for the 80 hours of health and welfare and/or pension benefits which accrue during the vacation period.

(iv) An employee entitled to two weeks paid vacation who instead works the full 52 weeks in the year, receiving the full 2,080 hours worth of health and welfare and/or pension benefits, would be due an extra 80 hours of vacation pay in lieu of actually taking the vacation; however, such an employee would not be entitled to have an additional 80 hours of health and welfare and/or pension benefits included in his vacation pay.

(2) A fringe benefit determination calling for a specified benefit such as health insurance contemplates a fixed and definite contribution to a "bona fide" plan (as that term is defined in § 4.171) by an employer on behalf of each employee, based on the monetary cost to the employer rather than on the level of benefits provided. Therefore, in determining compliance with an applicable fringe benefit determination, the amount of the employer's contribution on behalf of each individual employee governs. Thus, as set forth in § 4.172, if a determination should require a contribution to a plan providing a specified fringe benefit and that benefit can be obtained for less than the required contribution, it would be necessary for the employer to make up the difference in cash to the employee, or furnish equivalent benefits, or a combination thereof. The following illustrates the application of this principle: A fringe benefit determination requires a rate of $36.40 per month employee for a health insurance plan. The employer obtains the health insurance coverage specified at a rate of $20.45 per month for a single employee, $30.60 for an employee with spouse, and $40.90 for an employee with a family. The employer is required to make up the difference in cash or equivalent benefits to the first two classes of employees in order to satisfy the determination, notwithstanding that coverage for an employee would be automatically changed by the employer if the employee's status should change (e.g., single to married) and notwithstanding that the employer's average contribution per employee may be equal to or in excess of $36.40 per month.

(3) In determining eligibility for benefits under certain wage determinations containing hours or length of service requirements (such as having to work 40 hours in the preceding month), the contractor must take into account time spent by employees on commercial work as well as time spent on the Government contract.

(b) Some fringe benefit determinations specifically provide for health and welfare and/or pension benefits in terms of average cost. Under this concept, a contractor's contributions per employee to a "bona fide" fringe benefit plan are permitted to vary depending upon the individual employee's marital or employment status. However, the firm's total contributions for all service employees enrolled in the plan must average at least the fringe benefit determination requirement per hour per service employee. If the contractor's contributions average less than the amount required by the determination, then the firm must make up the deficiency by making cash equivalent payments or equivalent fringe benefit payments to all service employees in the plan who worked on the contract during the payment period. Where such deficiencies are made up by means of cash equivalent payments, the payments must be made promptly on the following payday. The following illustrates the application of this principle: The determination requires an average contribution of $0.84 an hour. The contractor makes payments to bona fide fringe benefit plans on a monthly basis. During a month the firm contributes $15,000 for the service employees employed on the contract who are enrolled in the plan, and a total of 20,000 man-hours had been worked by all service employees during the month. Accordingly, the firm's average cost would have been $15,000 ÷ 20,000 hours or $0.75 per hour, resulting in a deficiency of $0.09 per hour. Therefore, the contractor owes the service employees in the plan who worked on the contract during the month an additional $0.09 an hour for each hour worked on the contract, payable on the next regular payday for wages. Unless otherwise provided in the applicable wage determination, contributions made by the employer for non-service employees may not be credited toward meeting Service Contract Act fringe benefit obligations.

(c) *Employees not enrolled in or excluded from participating in fringe benefit plans.* (1) Some health and welfare and pension plans contain eligibility exclusions for certain employees. For example, temporary and part-time employees may be excluded from participating in such plans. Also, employees receiving benefits through participation in plans of an employer other than the Government contractor or by a spouse's employer may be prevented from receiving benefits from the contractor's plan because of prohibitions against "double coverage". While such exclusions do not invalidate an otherwise bona fide insurance plan, employer contributions to such a plan cannot be considered to be made on behalf of the excluded employees. Accordingly, under fringe benefit determination requirements as described in the preceding subparagraph (a)(2), the employees excluded from participation in the health insurance plan must be furnished equivalent bona fide fringe benefits or be paid a cash equivalent payment during the period that they are not eligible to participate in the plan.

(2) It is not required that all employees participating in a fringe benefit plan be entitled to receive benefits from that plan at all times. For example, under some plans, newly hired employees who are eligible to participate in an insurance plan from their first day of employment may be prohibited from receiving benefits from the plan during a specified "waiting period". Contributions made on behalf of such employees would serve to discharge the contractor's obligation to furnish the fringe benefit. However, if no contributions are made for such employees, no credit may be taken toward the contractor's fringe benefit obligations.

(d) *Payment of health and welfare and pension benefits.* (1) Health and welfare and/or pension payments to a "bona fide" insurance plan or trust program may be made on a periodic payment basis which is not less often than quarterly. However, where fringe benefit determinations contemplate a fixed contribution on behalf of each employee, and a contractor exercises his option to make hourly cash equivalent or differential payments, such payments must be made promptly on the regular payday for wages. (See § 4.165.)

(2) The rules and regulations for furnishing health and welfare and pen-

sion benefits to temporary and part-time employees are discussed in § 4.176.

(3) The rules and regulations for furnishing equivalent fringe benefits or cash equivalents in lieu of health and welfare and pension benefits are discussed in § 4.177.

§ 4.176 Payment of fringe benefits to temporary and part-time employees.

(a) As set forth in § 4.165(a)(2), the Act makes no distinction, with respect to its compensation provisions, between temporary, part-time, and full-time employees. Accordingly, in the absence of express limitations, the provisions of an applicable fringe benefit determination apply to all temporary and part-time service employees engaged in covered work. However, in general, such temporary and part-time employees are only entitled to an amount of the fringe benefits specified in an applicable determination which is proportionate to the amount of time spent in covered work. The application of these principles may be illustrated by the following examples:

(1) Assuming the paid vacation for full-time employees is one week of 40 hours, a part-time employee working a regularly scheduled workweek of 16 hours is entitled to 16 hours of paid vacation time or its equivalent each year, if all other qualifications are met.

(2) In the case of holidays, a part-time employee working a regularly scheduled workweek of 16 hours would be entitled to two-fifths of the holiday pay due full-time employees. It is immaterial whether or not the holiday falls on a normal workday of the part-time employee. A temporary or casual employee hired during a holiday week, but after the holiday, would be due no holiday benefits for that week.

(3) Holiday or vacation pay obligations to temporary and part-time employees working an irregular schedule of hours may be discharged by paying such employees a proportion of the holiday or vacation benefits due full-time employees based on the number of hours each such employee worked in the workweek prior to the workweek in which the holiday occurs or, with respect to vacations, the number of hours which the employee worked in the year preceding the employee's anniversary date of employment. For example:

(i) An employee works 10 hours during the week preceding July 4, a designated holiday. The employee is entitled to 10/40 of the holiday pay to which a full-time employee is entitled (i.e., 10/40 times 8=2 hours holiday pay).

(ii) A part-time employee works 520 hours during the 12 months preceding the employee's anniversary date. Since the typical number of nonovertime hours in a year of work is 2,080, if a full-time employee would be entitled to one week (40 hours) paid vacation under the applicable fringe benefit determination, then the part-time employee would be entitled to 520/2,080 times 40=10 hours paid vacation.

(4) A part-time employee working a regularly scheduled workweek of 20 hours would be entitled to one-half of the health and welfare and/or pension benefits specified in the applicable fringe benefit determination. Thus, if the determination requires $36.40 per month for health insurance, the contractor could discharge his obligation towards the employee in question by providing a health insurance policy costing $18.20 per month.

(b) A contractor's obligation to furnish the specified fringe benefits to temporary and part-time employees may be discharged by furnishing equivalent benefits, cash equivalents, or a combination thereof in accordance with the rules and regulations set forth in § 4.177.

§ 4.177 Discharging fringe benefit obligations by equivalent means.

(a) *In general.* (1) Section 2(a)(2) of the Act, which provides for fringe benefits that are separate from and in addition to the monetary compensation required under section 2(a)(1), permits an employer to discharge his obligation to furnish the fringe benefits specified in an applicable fringe benefit determination by furnishing any equivalent combinations of "bona fide" fringe benefits or by making equivalent or differential payments in cash. However, credit for such payments is limited to the employer's fringe benefit obligations under section 2(a)(2), since the Act does not authorize any part of the monetary wage required by section 2(a)(1) and specified in the wage determination and the contract, to be offset by the fringe benefit payments or equivalents which are furnished or paid pursuant to section 2(a)(2).

(2) When a contractor substitutes fringe benefits not specified in the fringe benefit determination contained in the contract for fringe benefits which are so specified, the substituted fringe benefits, like those for which the contract provisions are prescribed, must be "bona fide" fringe benefits, as that term is defined in § 4.171.

(3) When a contractor discharges his fringe benefit obligation by furnishing, in lieu of those benefits specified in the applicable fringe benefit determination, other "bona fide" fringe benefits, cash payments, or a combination thereof, the substituted fringe benefits and/or cash payments must be "equivalent" to the benefits specified in the determination. As used in this subpart, the terms "equivalent fringe benefit" and "cash equivalent" mean equal in terms of monetary cost to the contractor. Thus, as set forth in § 4.172, if an applicable fringe benefit determination calls for a particular fringe benefit in a stated amount and the contractor furnished this benefit through contributions in a lesser amount, the contractor must furnish the employee with the difference between the amount stated in the determination and the actual cost of the benefit which the contractor provides. This principle may be illustrated by the example given in § 4.175(a)(2).

(b) *Furnishing equivalent fringe benefits.* (1) A contractor's obligation to furnish fringe benefits which are stated in a specified cash amount may be discharged by furnishing any combination of "bona fide" fringe benefits costing an equal amount. Thus, if an applicable determination specifies that 20 cents per hour is to be paid into a pension fund, this fringe benefit obligation will be deemed to be met if, instead, hospitalization benefits costing not less than 20 cents per hour are provided. The same obligation will be met if hospitalization benefits costing 10 cents an hour and life insurance benefits costing 10 cents an hour are provided. As set forth in § 4.171(c), no benefit required to be furnished the employee by any other law, such as workers' compensation, may be credited toward satisfying the fringe benefit requirements of the Act.

(2) A contractor who wishes to furnish equivalent fringe benefits in lieu of those benefits which are not stated in a specified cash amount, such as "one week paid vacation", must first determine the equivalent cash value of such benefits in accordance with the rules set forth in paragraph (c) of this section.

(c) *Furnishing cash equivalents.* (1) Fringe benefit obligations may be discharged by paying to the employee on his regular payday, in addition to the monetary wage required, a cash amount per hour in lieu of the specified fringe benefits, provided such amount is equivalent to the cost of the fringe benefits required. If, for example, an employee's monetary rate under an applicable determination is $4.50 an hour, and the fringe benefits to be furnished are hospitalization benefits costing 20 cents an hour and retirement benefits costing 20 cents an hour, the fringe benefit obligation is discharged if instead of furnishing the required fringe benefits, the employer pays the employee, in cash, 40 cents per hour as the cash equivalent of the fringe benefits in addition to the $4.50 per hour wage rate required under the applicable wage determination.

(2) The hourly cash equivalent of those fringe benefits which are not stated in the applicable determination in terms of hourly cash amounts may be obtained by mathematical computation through the use of pertinent factors such as the monetary wages paid the employee and the hours of work attributable to the period, if any, by which fringe benefits are measured in the determination. If the employee's regular rate of pay is greater than the minimum monetary wage specified in the wage determination and the contract, the former must be used for this computation, and if the fringe benefit determination does not specify

any daily or weekly hours of work by which benefits are to be measured, a standard 8-hour day and 40-hour week will be considered applicable. The application of these rules in typical situations is illustrated in paragraphs (c)(3) through (7) of this section.

(3) Where fringe benefits are stated as a percentage of the monetary rate, the hourly cash equivalent is determined by multiplying the stated percentage by the employees' regular or basic (i.e., wage determination) rate of pay, whichever is greater. For example, if the determination calls for a 5 percent pension fund payment and the employee is paid a monetary rate of $4.50 an hour, or if the employee earns $4.50 an hour on a piece-work basis in a particular workweek, the cash equivalent of that payment would be 22$\frac{1}{2}$ cents an hour.

(4) If the determination lists a particular fringe benefit in such terms as $8 a week, the hourly cash equivalent is determined by dividing the amount stated in the determination by the number of working hours to which the amount is attributable. For example, if a determination lists a fringe benefit as "pension—$8 a week", and does not specify weekly hours, the hourly cash equivalent is 20 cents per hour, i.e., $8 divided by 40, the standard number of non-overtime working hours in a week.

(5) In determining the hourly cash equivalent of those fringe benefits which are not stated in the determination in terms of a cash amount, but are stated, for example, as "nine paid holidays per year" or "1 week paid vacation after one year of service", the employee's hourly monetary rate of pay is multiplied by the number of hours making up the paid holidays or vacation. Unless the hours contemplated in the fringe benefit are specified in the determination, a standard 8-hour day and 40-hour week is considered applicable. The total annual cost so determined is divided by 2,080, the standard number of non-overtime hours in a year of work, to arrive at the hourly cash equivalent. This principle may be illustrated by the following examples:

(i) If a particular determination lists as a fringe benefit "nine holidays per year" and the employee's hourly rate of pay is $4.50, the $4.50 is multiplied by 72 (9 days of 8 hours each) and the result, $324, is then divided by 2,080 to arrive at the hourly cash equivalent, $0.1557 an hour. See § 4.174(c)(4).

(ii) If the determination requires "one week paid vacation after one year of service", and the employee's hourly rate of pay is $4.50, the $4.50 is multiplied by 40 and the result, $180.00, is then divided by 2,080 to arrive at the hourly cash equivalent, $0.0865 an hour.

(6) Where an employer elects to pay an hourly cash equivalent in lieu of a paid vacation, which is computed in accordance with paragraph (c)(5) of this section, such payments need commence only after the employee has satisfied the "after one year of service" requirement. However, should the employee terminate employment for any reason before receiving the full amount of vested vacation benefits due, the employee must be paid the full amount of any difference remaining as the final cash payment. For example, an employee becomes eligible for a week's vacation pay on March 1. The employer elects to pay this employee an hourly cash equivalent beginning that date; the employee terminates employment on March 31. Accordingly, as this employee has received only $\frac{1}{12}$ of the vacation pay to which he/she is entitled, the employee is due the remaining $\frac{11}{12}$ upon termination. As set forth in § 4.173(e), the rate applicable to the computation of cash equivalents for vacation benefits is the hourly wage rate in effect at the time such equivalent payments are actually made.

(d) *Furnishing a combination of equivalent fringe benefits and cash payments.* Fringe benefit obligations may be discharged by furnishing any combination of cash or fringe benefits as illustrated in the preceding paragraphs of this section, in monetary amounts the total of which is equivalent, under the rules therein stated, to the determined fringe benefits specified in the contract. For example, if an applicable determination specifies that 20 cents per hour is to be paid into a pension fund, this fringe benefit obligation will be deemed to be met if instead, hospitalization benefits costing

15 cents an hour and a cash equivalent payment of 5 cents an hour are provided.

(e) *Effect of equivalents in computing overtime pay.* Section 6 of the Act excludes from the regular or basic hourly rate of an employee, for purposes of determining the overtime pay to which the employee is entitled under any other Federal law, those fringe benefit payments computed under the Act which are excluded from the regular rate under the Fair Labor Standards Act by provisions of section 7(e) (formerly designated as section 7(d)) of that Act (29 U.S.C. 207(e)). Fringe benefit payments which qualify for such exclusion are described in Subpart C of Regulations, 29 CFR Part 778. When such fringe benefits are required to be furnished to service employees engaged in contract performance, the right to compute overtime pay in accordance with the above rule is not lost to a contractor or subcontractor because it discharges its obligation under this Act to furnish such fringe benefits through alternative equivalents as provided in this section. If it furnishes equivalent benefits or makes cash payments, or both, to such an employee as authorized herein, the amounts thereof, which discharge the employer's obligation to furnish such specified fringe benefits, may be excluded pursuant to this Act from the employee's regular or basic rate of pay in computing any overtime pay due the employee under any other Federal law. No such exclusion can operate, however, to reduce an employee's regular or basic rate of pay below the monetary wage rate specified as the applicable minimum wage rates under sections 2(a)(1), 2(b), or 4(c) of this Act or under other law or an employment contract.

§ 4.178 Computation of hours worked.

Since employees subject to the Act are entitled to the minimum compensation specified under its provisions for each hour worked in performance of a covered contract, a computation of their hours worked in each workweek when such work under the contract is performed is essential. Determinations of hours worked will be made in accordance with the principles applied under the Fair Labor Standards Act as set forth in Part 785 of this title which is incorporated herein by reference. In general, the hours worked by an employee include all periods in which the employee is suffered or permitted to work whether or not required to do so, and all time during which the employee is required to be on duty or to be on the employer's premises or to be at a prescribed workplace. The hours worked which are subject to the compensation provisions of the Act are those in which the employee is engaged in performing work on contracts subject to the Act. However, unless such hours are adequately segregated, as indicated in § 4.179, compensation in accordance with the Act will be required for all hours of work in any workweek in which the employee performs any work in connection with the contract, in the absence of affirmative proof to the contrary that such work did not continue throughout the workweek.

§ 4.179 Identification of contract work.

Contractors and subcontractors under contracts subject to the Act are required to comply with its compensation requirements throughout the period of performance on the contract and to do so with respect to all employees who in any workweek are engaged in performing work on such contracts. If such a contractor during any workweek is not exclusively engaged in performing such contracts, or if while so engaged it has employees who spend a portion but not all of their worktime in the workweek in performing work on such contracts, it is necessary for the contractor to identify accurately in its records, or by other means, those periods in each such workweek when the contractor and each such employee performed work on such contracts. In cases where contractors are not exclusively engaged in Government contract work, and there are adequate records segregating the periods in which work was performed on contracts subject to the Act from periods in which other work was performed, the compensation specified under the Act need not be paid for hours spent on non-contract work. However, in the absence of records adequately segregating non-covered work from the work performed on or in connection with the contract, all employees working in the establishment or department where such covered work is performed shall be presumed to have worked on or in connection with the contract during the period of its performance, unless affirmative proof establishing the contrary is presented. Similarly, in the absence of such records, an employee performing any work on or in connection with the contract in a workweek shall be presumed to have continued to perform such work throughout the workweek, unless affirmative proof establishing the contrary is presented. Even where a contractor can segregate Government from non-Government work, it is necessary that the contractor comply with the requirements of section 6(e) of the FLSA discussed in § 4.160.

Overtime Pay of Covered Employees

§ 4.180 Overtime pay—in general.

The Act does not provide for compensation of covered employees at premium rates for overtime hours of work. Section 6 recognizes however, that other Federal laws may require such compensation to be paid to employees working on or in connection with contracts subject to the Act (see § 4.181) and prescribes, for purposes of such laws, the manner in which fringe benefits furnished pursuant to the Act shall be treated in computing such overtime compensation as follows: "In determining any overtime pay to which such service employees are entitled under any Federal law, the regular or basic hourly rate of such an employee shall not include any fringe benefit payments computed hereunder which are excluded from the regular rate under the Fair Labor Standards Act by provisions of section 7(d) [now section 7(e)] thereof." Fringe benefit payments which qualify for such exclusion are described in Part 778, Subpart C of this title. The interpretations there set forth will be applied in determining the overtime pay to which covered service employees are entitled under other Federal statutes. The effect of section 6 of the Act in situations where equivalent fringe benefits or cash payments are provided in lieu of the specified fringe benefits is stated in § 4.177(e) of this part, and illustrated in § 4.182.

§ 4.181 Overtime pay provisions of other Acts.

(a) *Fair Labor Standards Act.* Although provision has not been made for insertion in Government contracts of stipulations requiring compliance with the overtime provisions of the Fair Labor Standards Act, contractors and subcontractors performing contracts subject to the McNamara-O'Hara Service Contract Act may be required to compensate their employees working on or in connection with such contracts for overtime work pursuant to the overtime pay standards of the Fair Labor Standards Act. This is true with respect to employees engaged in interstate or foreign commerce or in the production of goods for such commerce (including occupations and processes closely related and directly essential to such production) and employees employed in enterprises which are so engaged, subject to the definitions and exceptions provided in such Act. Such employees, except as otherwise specifically provided in such Act, must receive overtime compensation at a rate of not less than 1½ times their regular rate of pay for all hours worked in excess of the applicable standard in a workweek. See Part 778 of this title. However, the Fair Labor Standards Act provides no overtime pay requirements for employees, not within such interstate commerce coverage of the Act, who are subject to its minimum wage provisions only by virtue of the provisions of section 6(e), as explained in § 4.180.

(b) *Contract Work Hours and Safety Standards Act.* (1) The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332) applies generally to Government contracts, including service contracts in excess of $2,500, which may require or involve the employment of laborers and mechanics. Guards, watchmen, and many other classes of service employees are laborers or mechanics within the meaning of such Act. However, employees rendering only professional services, seamen, and as a general rule those whose work is only clerical or supervisory or nonmanual in nature, are not deemed laborers or mechanics for purposes of the Act. The wages of every laborer or mechanic for performance of work on such contracts must include compensation at a rate not less than 1½ times the employee's basic rate of pay for all hours worked in any workweek in excess of 40 or in excess of eight on any calendar days therein, whichever is the greater number of overtime hours. Exemptions are provided for certain transportation and communications contracts, contracts for the purchase of supplies ordinarily available in the open market, and work required to be done in accordance with the provisions of the Walsh-Healey Act.

(2) Regulations concerning this Act are contained in Subparts A and C of 29 CFR Part 5 which permit overtime pay to be computed in the same manner as under the Fair Labor Standards Act, subject of course to the differences in computations required by reason of the daily overtime provision of the Contract Work Hours and Safety Standards Act, which has no counterpart in the Fair Labor Standards Act.

(3) Although the application of the Contract Work Hours and Safety Standards Act does not depend on inclusion of its requirements in provisions physically made part of the contract, the Act and the regulations of the Secretary require such provisions to be set forth in contract clauses. (See § 5.5(c) of this subtitle.)

(c) *Walsh-Healey Public Contracts Act.* As pointed out in § 4.117, while some Government contracts may be subject both to the McNamara-O'Hara Service Contract Act and to the Walsh-Healey Public Contracts Act, the employees performing work on the contract which is subject to the latter Act are, when so engaged, exempt from the provisions of the former. They are, however, subject to the overtime provisions of the Walsh-Healey Act if, in any workweek, any of the work performed for the employer is subject to such Act and if, in such workweek, the total hours worked by the employee for the employer (whether wholly or only partly on such work) exceed 40 hours in the workweek or 8 hours in any day therein. In any such workweek the Walsh-Healey Act requires payment of overtime compensation at a rate not less than 1½ times the employee's basic rate for such weekly or daily overtime hours, whichever are greater in number. The overtime pay provisions of the Walsh-Healey Act are discussed in greater detail in 41 CFR Part 50-201.

§ 4.182 *Overtime pay of service employees entitled to fringe benefits.*

Reference is made in § 4.180 to the rules prescribed by section 6 of the Act which permit exclusion of certain fringe benefits and equivalents provided pursuant to section 2(a)(2) of the Act from the regular or basic rate of pay when computing overtime compensation of a service employee under the provisions of any other Federal law. As provided in § 4.177, not only those fringe benefits excludable under section 6 as benefits determined and specified under section 2(a)(2), but also equivalent fringe benefits and cash payments furnished in lieu of the specified benefits may be excluded from the regular or basic rate of such an employee. The application of this rule may be illustrated by the following examples:

(a) The A company pays a service employee $4.50 an hour in cash under a wage determination which requires a monetary rate of not less than $4 and a fringe benefit contribution of 50 cents which would qualify for exclusion from the regular rate under section 7(e) of the Fair Labor Standards Act. The contractor pays the 50 cents in cash because he made no contributions for fringe benefits specified in the determination and the contract. Overtime compensation in this case would be computed on a regular or basic rate of $4 an hour.

(b) The B company has for some time been paying $4.25 an hour to a service employee as his basic cash wage plus 25 cents an hour as a contribution to a welfare and pension plan, which contribution qualifies for exclusion from the regular rate under the Fair Labor Standards Act. For performance of work under a contract subject to the Act a monetary rate of $4 and a fringe benefit contribution of 50 cents (also qualifying for such exclusion) are specified because they are found to be prevailing for such employees in the locality. The contractor may credit the 25 cent welfare and pension contribution toward the discharge of his fringe benefit obligation under the contract but must also make an additional contribution of 25 cents for the specified or equivalent fringe benefits or pay the employee an additional 25 cents in cash. These contributions or equivalent payments may be excluded from the employee's regular rate which remains $4.25, the rate agreed upon as the basic cash wage.

(c) The C company has been paying $4 an hour as its basic cash wage on which the firm has been computing overtime compensation. For performance of work on a contract subject to the Act the same rate of monetary wages and a fringe benefit contribution of 50 cents an hour (qualifying for exclusion from the regular rate under the Fair Labor Standards Act) are specified in accordance with a determination that these are the monetary wages and fringe benefits prevailing for such employees in the locality. The contractor is required to continue to pay at least $4 an hour in monetary wages and at least this amount must be included in the employee's regular or basic rate for overtime purposes under applicable Federal law. The fringe benefit obligation under the contract would be discharged if 50 cents of the contributions for fringe benefits were for the fringe benefits specified in the contract or equivalent benefits as defined in § 4.177. The company may exclude such fringe benefit contributions from the regular or basic rate of pay of the service employee in computing overtime pay due.

NOTICE TO EMPLOYEES

§ 4.183 Employees must be notified of compensation required.

The Act, in section 2(a)(4), and the regulations thereunder in § 4.6(e), require all contracts subject to the Act which are in excess of $2,500 to contain a clause requiring the contractor or subcontractor to notify each employee commencing work on a contract to which the Act applies of the compensation required to be paid such employee under section 2(a)(1) and the fringe benefits required to be furnished under section 2(a)(2). A notice form (WH Publication 1313 and any applicable wage determination) provided by the Wage and Hour Division is to be used for this purpose. It may be delivered to the employee or posted as stated in § 4.184.

§ 4.184 Posting of notice.

Posting of the notice provided by the Wage and Hour Division shall be in a prominent and accessible place at the worksite, as required by § 4.6(e). The display of the notice in a place where it may be seen by employees performing on the contract will satisfy the requirement that it be in a "prominent and accessible place". Should display be necessary at more than one site, in order to assure that it is seen by such employees, additional copies of the poster may be obtained without cost from the Division. The contractor or subcontractor is required to notify each employee of the compensation due or attach to the poster any applicable wage determination specified in the contract listing all minimum monetary wages and fringe benefits to be paid or furnished to the classes of service employees performing on the contract.

RECORDS

§ 4.185 Recordkeeping requirements.

The records which a contractor or subcontractor is required to keep concerning employment of employees subject to the Act are specified in § 4.6(g) of Subpart A of this part. They are required to be maintained for 3 years from the completion of the work, and must be made available for inspection and transcription by authorized representatives of the Administrator. Such records must be kept for each service employee performing work under the contract, for each workweek during the performance of the contract. If the required records are not separately kept for the service employees performing on the contract, it will be presumed, in the absence of affirmative proof to the contrary, that all service employees in the department or establishment where the contract was performed were engaged in covered work during the period of performance. (See § 4.179.)

Subpart E—Enforcement

§ 4.187 Recovery of underpayments.

(a) The Act, in section 3(a), provides that any violations of any of the contract stipulations required by sections 2(a)(1), 2(a)(2), or 2(b) of the Act, shall render the party responsible liable for the amount of any deductions, rebates, refunds, or underpayments (which includes non-payment) of compensation due to any employee engaged in the performance of the contract. So much of the accrued payments due either on the contract or on any other contract (whether subject to the Service Contract Act or not) between the same contractor and the Government may be withheld in a deposit fund as is necessary to pay the employees. In the case of requirements-type contracts, it is the contracting agency, and not the using agencies, which has the responsibility for complying with a withholding request by the Secretary or authorized representative. The Act further provides that on order of the Secretary (or authorized representatives), any compensation which the head of the Federal agency or the Secretary has found to be due shall be paid directly to the underpaid employees from any accrued payments withheld. In order to effectuate the efficient administration of this provision of the Act, such withheld funds shall be transferred to the Department of Labor for disbursement to the underpaid employees on order of the Secretary or his or her authorized representatives, or an Administrative Law Judge, and are not paid directly to such employees by the contracting agency without the express prior consent of the Administrator. (See Decision of the Comptroller General, B-170784, February 12, 1971.) It is mandatory for a contracting officer to adhere to a request from the Department of Labor to withhold funds where such funds are available. (See Decision of the Comptroller General, B-109257, October 14, 1952, arising under the Walsh-Healey Act.) Contract funds which are or may become due a contractor under any contract with the United States may be withheld prior to the institution of administrative proceedings by the Secretary. (*McCasland* v. *U.S. Postal Service*, 82 CCH Labor Cases ¶ 33,607 (N.D. N.Y. 1977.))

(b) *Priority to withheld funds.* The Comptroller General has afforded employee wage claims priority over an Internal Revenue Service levy for unpaid taxes. (See Decisions of the Comptroller General, B-170784, February 17, 1971; B-189137, August 1, 1977; 546 Comp. Gen. 499 (1977); 55 Comp. Gen. 744 (1976), arising under the Davis-Bacon Act; B-178198, August 30, 1973; B-161460, May 25, 1967.)

(1) As the Comptroller General has stated, "[t]he legislative histories of these labor statutes [Service Contract Act and Contract Work Hours and Safety Standards Act, 41 U.S.C. 327, *et seq.*] disclose a progressive tendency to extend a more liberal interpretation and construction in successive enactments with regard to worker's benefits, recovery and repayment of wage underpayments. Further, as remedial legislation, it is axiomatic that they are to be liberally construed". (Decision of the Comptroller General, B-170784, February 17, 1971.)

(2) Since section 3(a) of the Act provides that accrued contract funds withheld to pay employees wages must be held in a deposit fund, it is the position of the Department of Labor that monies so held may not be used or set aside for agency reprocurement costs. To hold otherwise would be inequitable and contrary to public policy, since the employees have performed work from which the Government has received the benefit (see *National Surety*

Corporation v. *U.S.*, 132 Ct. Cl. 724, 728, 135 F. Supp 381 (1955), cert. denied, 350 U.S. 902), and to give contracting agency reprocurement claims priority would be to require employees to pay for the breach of contract between the employer and the agency. The Comptroller General has sanctioned priority being afforded wage underpayments over the reprocurement costs of the contracting agency following a contractor's default or termination for cause. Decision of the Comptroller General, B-167000, June 26, 1969; B-178198, August 30, 1973; and B-189137, August 1, 1977.

(3) Wage claims have priority over reprocurement costs and tax liens without regard to when the competing claims were raised. See Decisions of the Comptroller General, B-161460, May 25, 1967; B-189137, August 1, 1977.

(4) Wages due workers underpaid on the contract workers have priority over any assignee of the contractor, including assignments made under the Assignment of Claims Act, 311 U.S.C. 203, 41 U.S.C. 115, to funds withheld, since an assignee can acquire no greater rights to withheld funds than the assignor has in the absence of an assignment. See *Modern Industrial Bank* v. *U.S.*, 101 Ct. Cl. 808 (1944); *Royal Indemnity Co.* v. *United States*, 178 Ct. Cl. 46, 371 F. 2d 462 (1967), cert. denied, 389 U.S. 833; *Newark Insurance Co.* v. *U.S.* 149 Ct. Cl. 170, 181 F. Supp. 246 (1960); *Henningsen* v. *United States Fidelity and Guaranty Company*, 208 U.S. 404 (1908). Where employees have been underpaid, the assignor has no right to assign funds since the assignor has no property rights to amounts withheld from the contract to cover underpayments of workers which constitute a violation of the law and the terms, conditions, and obligations under the contract. (Decision of the Comptroller General, B-164881, August 14, 1968; B-178198, August 30, 1973; 56 Comp. Gen. 499 (1977); 55 Comp Gen. 744 (1976); *The National City Bank of Evansville* v. *United States*, 143 Ct. Cl. 154, 163 F. Supp. 846 (1958); *National Surety Corporation* v. *United States*, 132 Ct. Cl. 724, 135 F. Supp. 381 (1955), cert. denied, 350 U.S. 902.)

(5) The Comptroller General, recognizing that unpaid laborers have an equitable right to be paid from contract retainages, has also held that wage underpayments under the Act have priority over any claim by the trustee in bankruptcy. 56 Comp. Gen. 499 (1977), citing *Pearlman* v. *Reliance Insurance Company*, 371 U.S. 132 (1962); *Hadden* v. *United States*, 132 Ct. Cl. 529 (1955), in which the courts gave priority to sureties who had paid unpaid laborers over the trustee in bankruptcy.

(c) Section 5(b) of the Act provides that if the accrued payments withheld under the terms of the contract are insufficient to reimburse all service employees with respect to whom there has been a failure to pay the compensation required pursuant to the Act, the United States may bring action against the contractor, subcontractor, or any sureties in any court of competent jurisdiction to recover the remaining amount of underpayments. The Service Contract Act is not subject to the statute of limitations in the Portal to Portal Act, 29 U.S.C. 255, and contains no prescribed period within which such an action must be instituted; it has therefore been held that the general period of six years prescribed by 28 U.S.C. 2415 applies to such actions, *United States of America* v. *Deluxe Cleaners and Laundry, Inc.*, 511 F. 2d 929 (C.A. 4, 1975). Any sums thus recovered by the United States shall be held in the deposit fund and shall be paid, on the order of the Secretary, directly to the underpaid employees. Any sum not paid to an employee because of inability to do so within 3 years shall be covered into the Treasury of the United States as miscellaneous receipts.

(d) Releases or waivers executed by employees for unpaid wages and fringe benefits due them are without legal effect. As stated by the Supreme Court in *Brooklyn Savings Bank* v. *O'Neil*, 324 U.S. 697, 704, (1945), arising under the Fair Labor Standards Act:

"Where a private right is granted in the public interest to effectuate a legislative policy, waiver of a right so charged or colored with the public interest will not be allowed where it would thwart the legislative policy which it was designed to effectuate."

See also *Schulte, Inc.* v. *Gangi*, 328 U.S. 108 (1946); *United States* v. *Morley Construction Company*, 98 F. 2d. 781 (C.A. 2, 1938), cert. denied, 305 U.S. 651.

Further, as noted above, monies not paid to employees to whom they are due because of violation are covered into the U.S. Treasury as provided by section 5(b) of the Act.

(e)(1) The term "party responsible" for violations in section 3(a) of the Act is the same term as contained in the Walsh-Healey Public Contracts Act, and therefore, the same principles are applied under both Acts. An officer of a corporation who actively directs and supervises the contract performance, including employment policies and practices and the work of the employees working on the contract, is a party responsible and liable for the violations, individually and jointly with the company (*S & G Coal Sales, Inc.*, Decision of the Hearing Examiner, PC-946, January 21, 1965, affirmed by the Administrator June 8, 1965; *Tennessee Processing Co., Inc.*, Decision of the Hearing Examiner, PC-790, September 28, 1965).

(2) The failure to perform a statutory public duty under the Service Contract Act is not only a corporate liability but also the personal liability of each officer charged by reason of his or her corporate office while performing that duty. *United States* v. *Sancolmar Industries, Inc.*, 347 F. Supp 404, 408 (E.D. N.Y. 1972). Accordingly, it has been held by administrative decisions and by the courts that the term "party responsible", as used in section 3(a) of the Act, imposes personal liability for violations of any of the contract stipulations required by sections 2(a)(1) and (2) and 2(b) of the Act on corporate officers who control, or are responsible for control of, the corporate entity, as they, individually, have an obligation to assure compliance with the requirements of the Act, the regulations, and the contracts. See, for example, *Waite, Inc.*, Decision of the ALJ, SCA 530-566, October 19, 1976, *Spruce-Up Corp.*, Decision of the Administrator SCA 368-370, August, 19, 1976, *Ventilation and Cleaning Engineers, Inc.*, Decision of the ALJ, SCA 176, August 23, 1973, Assistant Secretary, May 17, 1974, Secretary, September 27, 1974; *Fred Van Elk*, Decision of the ALJ, SCA 254-58, May 28, 1974, Administrator, November 25, 1974; *Murcole, Inc.*, Decision of the ALJ, SCA 195-198, April 11, 1974; *Emile J. Bouchet*, Decision of the ALJ, SCA 38, February 24, 1970; *Marwyn L. Grover*, Decision of the ALJ, SCA 485, August 15, 1976; *United States* v. *Islip Machine Works, Inc.*, 179 F. Supp. 585 (E.D. N.Y. 1959); *United States* v. *Sancolmar Industries, Inc.*, 347 F. Supp. 404 (E.D. N.Y. 1972).

(3) In essence, individual liability attaches to the corporate official who is responsible for, and therefore causes or permits, the violation of the contract stipulations required by the Act, i.e., corporate officers who control the day-to-day operations and management policy are personally liable for underpayments because they cause or permit violations of the Act.

(4) It has also been held that the personal responsibility and liability of individuals for violations of the Act is not limited to the officers of a contracting firm or to signatories to the Government contract who are bound by and accept responsibility for compliance with the Act and imposition of its sanctions set forth in the contract clauses in § 4.6, but includes all persons, irrespective of proprietary interest, who exercise control, supervision, or management over the performance of the contract, including the labor policy or employment conditions regarding the employees engaged in contract performance, and who, by action or inaction, cause or permit a contract to be breached. *U.S.* v. *Islip Machine Works, Inc.*, 179 F. Supp. 585 (E.D. N.Y. 1959); *U.S.* v. *Sancolmar Industries, Inc.*, 347 F. Supp. 404 (E.D. N.Y. 1972); *Oscar Hestrom Corp.*, Decision of the Administrator, PC-257, May 7, 1946, affirmed, *U.S.* v. *Hedstrom*, 8 Wage Hour Cases 302 (N.D. Ill. 1948); *Craddock-Terry Shoe Corp.*, Decision of the Administrator, PC-330, October 3, 1947; *Reynolds Research Corp.*, Decision of the Administrator, PC-381, October 24, 1951; *Etowah Garment Co., Inc.*, Decision of the Hearing Examiner, PC-632, August 9, 1957, Decision of

the Administrator, April 29, 1958; *Cardinal Fuel and Supply Co.*, Decision of the Hearing Examiner, PC-890, June 17, 1963.

(5) Reliance on advice from contracting agency officials (or Department of Labor officials without the authority to issue rulings under the Act) is not a defense against a contractor's liability for back wages under the Act. *Standard Fabrication Ltd.*, Decision of the Secretary, PC-297, August 3, 1948; *Airport Machining Corp.*, Decision of the ALJ, PC-1177, June 15, 1973; *James D. West*, Decision of the ALJ, SCA 397-398, November 17, 1975; *Metropolitan Rehabilitation Corp.*, WAB Case No. 78-25, August 2, 1979; *Fry Brothers Corp.*, WAB Case No. 76-6, June 14, 1977.

(f) The appellate rights of a contractor or subcontractor regarding violations of the Act, including back wage liability or the disposition of funds withheld by the agency for such liability are contained in Part 6 of this Title. Appeals in such matters have not been delegated to the contracting agencies and such matters cannot be appealed under the disputes clause in the contractor's contract.

(g) While the Act provides that action may be brought against a surety to recover underpayments of compensation, there is no statutory provision requiring that contractors furnish either payment or performance bonds before an award can be made. The courts have held, however, that when such a bond has been given, including one denominated as a performance rather than payment bond, and such a bond guarantees that the principal shall fulfill "all the undertakings, convenants, terms, conditions, and agreements" of the contract, or similar words to the same effect, the surety-guarantor is jointly liable for underpayments by the contractor of the wages and fringe benefits required by the Act up to the amount of the bond. *U.S.* v. *Powers Building Maintenance Co.*, 366 F. Supp. 819 (W.D. Okla. 1972); *U.S.* v. *Gillespie*, 72 CCH Labor Cases ¶ 33,986 (C.D. Cal. 1973) *U.S.* v. *Glens Falls Insurance Co.*, 279 F. Supp. 236 (E.D. Tenn. 1967); *United States* v. *Hudgins-Dize Co.*, 83 F. Supp. 593 (E.D. Va. 1949); *U.S.* v. *Continental Casualty Company*, 85 F. Supp. 573 (E.D. Pa. 1949), affirmed per curiam, 182 F.2d 941 (3rd Cir. 1950).

[46 FR 4337, Jan. 16, 1981; 46 FR 11285, Feb. 6, 1981]

§ 4.188 Ineligibility for further contracts when violations occur.

(a) Section 5 of the Act directs the Comptroller General to distribute a list to all agencies of the Government giving the names of persons or firms that the Federal agencies or the Secretary has found violated this Act. Unless the Secretary otherwise recommends because of unusual circumstances, no contract of the United States or the District of Columbia (whether or not subject to the Act) shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest until 3 years have elapsed from the date of publication of the list containing the names of such persons or firms. This prohibition against the award of a contract to an ineligible contractor applies to the contractor in its capacity as either a prime contractor or a subcontractor. Because the Act contains no provision authorizing removal from the list of the names of such persons or firms prior to the expiration of the three-year statutory period, the Secretary is without authority to accomplish such removal (other than in situations involving mistake or legal error). On the other hand, there may be situations in which persons or firms already on the list are found in a subsequent administrative proceeding to have again violated the Act and their debarment ordered. In such circumstances, a new, three-year debarment term will commence with the republication of such names on the list.

(b)(1) The term "unusual circumstances" is not defined in the Act. Accordingly, the determination must be made on a case-by-case basis in accordance with the particular facts present. It is clear, however, that the effect of the 1972 Amendments is to limit the Secretary's discretion to relieve violators from the debarred list (H. Rept. 92-1251, 92d Cong., 2d Sess. 5; S. Rept.

92-1131, 92d Cong., 2d Sess. 3-4) and that the violator of the Act has the burden of establishing the existence of unusual circumstances to warrant relief from the debarment sanction, *Ventilation and Cleaning Engineers, Inc.*, SCA-176, Administrative Law Judge, August 23, 1973, Assistant Secretary, May 22, 1974, Secretary, October 2, 1974. It is also clear that unusual circumstances do not include any circumstances which would have been insufficient to relieve a contractor from the ineligible list prior to the 1972 amendments, or those circumstances which commonly exist in cases where violations are found, such as negligent or willful disregard of the contract requirements and of the Act and regulations, including a contractor's plea of ignorance of the Act's requirements where the obligation to comply with the Act is plain from the contract, failure to keep necessary records and the like. *Emerald Maintenance Inc.*, Supplemental Decision of the ALJ, SCA-153, April 5, 1973.

(2) The Subcommittee report following the oversight hearings conducted just prior to the 1972 amendments makes it plain that the limitation of the Secretary's discretion through the unusual circumstances language was designed in part to prevent the Secretary from relieving a contractor from the ineligible list provisions merely because the contractor paid what he was required by his contract to pay in the first place and promised to comply with the Act in the future. See, House Committee on Education and Labor, Special Subcommittee on Labor, The Plight of Service Workers under Government Contracts 12-13 (Comm. Print 1971). As Congressman O'Hara stated: "Restoration * * * [of wages and benefits] is not in and of itself a penalty. The penalty for violation is the suspension from the right to bid on Government contracts * * *. The authority [to relieve from blacklisting] was intended to be used in situations where the violation was a minor one, or an inadvertent one, or one in which disbarment * * * would have been wholly disproportionate to the offense." House Committee on Education and Labor, Special Subcommittee on Labor, Hearings on H.R. 6244 and H.R. 6245, 92d Cong., 1st Sess. 3 (1971).

(3)(i) The Department of Labor has developed criteria for determining when there are unusual circumstances within the meaning of the Act. See, e.g., *Washington Moving & Storage Co.*, Decision of the Assistant Secretary, SCA 68, August 16, 1973, Secretary, March 12, 1974; *Quality Maintenance Co.*, Decision of the Assistant Secretary, SCA 119, January 11, 1974. Thus, where the respondent's conduct in causing or permitting violations of the Service Contract Act provisions of the contract is willful, deliberate or of an aggravated nature or where the violations are a result of culpable conduct such as culpable neglect to ascertain whether practices are in violation, culpable disregard of whether they were in violation or not, or culpable failure to comply with recordkeeping requirements (such as falsification of records), relief from the debarment sanction cannot be in order. Furthermore, relief from debarment cannot be in order where a contractor has a history of similar violations, where a contractor has repeatedly violated the provisions of the Act, or where previous violations were serious in nature.

(ii) A good compliance history, cooperation in the investigation, repayment of moneys due, and sufficient assurances of future compliance are generally prerequisites to relief. Where these prerequisites are present and none of the aggravated circumstances in the preceding paragraph exist, a variety of factors must still be considered, including whether the contractor has previously been investigated for violations of the Act, whether the contractor has committed recordkeeping violations which impeded the investigation, whether liability was dependent upon resolution of a bona fide legal issue of doubtful certainty, the contractor's efforts to ensure compliance, the nature, extent, and seriousness of any past or present violations, including the impact of violations on unpaid employees, and whether the sums due were promptly paid.

(4) A contractor has an affirmative obligation to ensure that its pay practices are in compliance with the Act, and cannot itself resolve questions

which arise, but rather must seek advice from the Department of Labor. *Murcole, Inc.*, Decision of the ALJ, SCA 195-198, April 10, 1974; *McLaughlin Storage, Inc.*, Decision of the ALJ, SCA 362-365, November 5, 1975, Administrator, March 25, 1976; *Able Building & Maintenance & Service Co.*, Decision of the ALJ, SCA 389-390, May 29, 1975, Assistant Secretary, January 13, 1976; *Aarid Van Lines, Inc.*, Decision of the Administrator, SCA 423-425, May 13, 1977.

(5) Furthermore, a contractor cannot be relieved from debarment by attempting to shift his/her responsibility to subordinate employees. *Security Systems, Inc.*, Decision of the ALJ, SCA 774-775, April 10, 1978; *Ventilation & Cleaning Engineers, Inc.*, Decision of the Secretary, SCA 176, September 27, 1974; *Ernest Roman*, Decision of the Secretary, SCA 275, May 6, 1977. As the Comptroller General has stated in considering debarment under the Davis-Bacon Act, "[n]egligence of the employer to instruct his employees as to the proper method of performing his work or to see that the employee obeys his instructions renders the employer liable for injuries to third parties resulting therefrom. * * * The employer will be liable for acts of his employee within the scope of the employment regardless of whether the acts were expressly or impliedly authorized. * * * Willful and malicious acts of the employee are imputable to the employer under the doctrine of respondeat superior although they might not have been consented to or expressly authorized or ratified by the employer." (Decision of the Comptroller General, B-145608, August 1, 1961.)

(6) Negligence per se does not constitute unusual circumstances. Relief on no basis other than negligence would render the effect of section 5(a) a nullity, since it was intended that only responsible bidders be awarded Government contracts. *Greenwood's Transfer & Storage, Inc.*, Decision of the Secretary, SCA 321-326, June 1, 1976; *Ventilation & Cleaning Engineers, Inc.*, Decision of the Secretary, SCA 176, September 27, 1974.

(c) Similarly, the term "substantial interest" is not defined in the Act. Accordingly, this determination, too, must be made on a case-by-case basis in light of the particular facts, and cognizant of the legislative intent "to provide to service employees safeguards similar to those given to employees covered by the Walsh-Healey Public Contracts Act". *Federal Food Services, Inc.*, Decision of the ALJ, SCA 585-592, November 22, 1977. Thus, guidance can be obtained from cases arising under the Walsh-Healey Act, which uses the concept "controlling interest". See *Regal Mfg. Co.*, Decision of the Administrator, PC-245, March 1, 1946; *Acme Sportswear Co.*, Decision of the Hearing Examiner, PC-275, May 8, 1946; *Gearcraft, Inc.*, Decision of the ALJ, PCX-1, May 3, 1972. In a supplemental decision of February 23, 1979, in *Federal Food Services, Inc.* the Judge ruled as a matter of law that the term "does not preclude every employment or financial relationship between a party under sanction and another * * * [and that] it is necessary to look behind titles, payments, and arrangements and examine the existing circumstances before reaching a conclusion in this matter."

(1) Where a person or firm has a direct or beneficial ownership or control of more than 5 percent of any firm, corporation, partnership, or association, a "substantial interest" will be deemed to exist. Similarly, where a person is an officer or director in a firm or the debarred firm shares common management with another firm, a "substantial interest" will be deemed to exist. Furthermore, wherever a firm is an affiliate as defined in § 4.1a(g) of Subpart A, a "substantial interest" will be deemed to exist, or where a debarred person forms or participates in another firm in which he/she has comparable authority, he/she will be deemed to have a "substantial interest" in the new firm and such new firm would also be debarred (*Etowah Garment Co., Inc.*, Decision of the Hearing Examiner, PC-632, August 9, 1957).

(2) Nor is interest determined by ownership alone. A debarred person will also be deemed to have a "substantial interest" in a firm if such person has participated in contract negotiations, is a signatory to a contract,

or has the authority to establish, control, or manage the contract performance and/or the labor policies of a firm. A "substantial interest" may also be deemed to exist, in other circumstances, after consideration of the facts of the individual case. Factors to be examined include, among others, sharing of common premises or facilities, occupying any position such as manager, supervisor, or consultant to, any such entity, whether compensated on a salary, bonus, fee, dividend, profit-sharing, or other basis of remuneration, including indirect compensation by virtue of family relationships or otherwise. A firm will be particularly closely examined where there has been an attempt to sever an association with a debarred firm or where the firm was formed by a person previously affiliated with the debarred firm or a relative of the debarred person.

(3) Firms with such identity of interest with a debarred person or firm will be placed on the debarred bidders list after the determination is made pursuant to procedures in Part 6, Subpart A, or § 4.12 and Part 6, Subpart D. Where a determination of such "substantial interest" is made after the initiation of the debarment period, contracting agencies are to terminate any contract with such firm entered into after the initiation of the original debarment period since all persons or firms in which the debarred person or firm has a substantial interest are also ineligible to receive Government contracts.

§ 4.189 Administrative proceedings relating to enforcement of labor standards.

The Secretary is authorized pursuant to the provisions of section 4(a) of the Act to hold hearings and make decisions based upon findings of fact as are deemed to be necessary to enforce the provisions of the Act. Pursuant to section 4(a) of the Act, the Secretary's findings of fact after notice and hearing are conclusive upon all agencies of the United States and, if supported by the preponderance of the evidence, conclusive in any court of the United States, without a trial de novo. *United States* v. *Powers Building Maintenance Co.*, 336 F. Supp. 819 (W.D. Okla. 1972). Rules of practice for administrative proceedings are set forth in Part 6 of this Title.

§ 4.190 Contract cancellation.

(a) As provided in section 3 of the Act, where a violation is found of any contract stipulation, the contract is subject upon written notice to cancellation by the contracting agency, whereupon the United States may enter into other contracts or arrangements for the completion of the original contract, charging any additional cost to the original contractor.

(b) Every contractor shall certify pursuant to § 4.6(n) of Subpart A that it is not disqualified for the award of a contract by virtue of its name appearing on the debarred bidders list or because any such currently listed person or firm has a substantial interest in said contractor, as described in § 4.188. Upon discovery of such false certification or determination of substantial interest in a firm performing on a Government contract, as the case may be, the contract is similarly subject upon written notice to immediate cancellation by the contracting agency and any additional cost for the completion of the contract charged to the original contractor as specified in paragraph (a), *supra*. Such contract is without warrant of law and has no force and effect and is void ab initio, 33 Comp Gen. 63; Decision of the Comptroller General, B-115051, August 6, 1953. Furthermore, any profit derived from said illegal contract is forfeited (*Paisner* v. *U.S.*, 138 Ct. Cl. 420, 150 F. Supp. 835 (1957), cert. denied, 355 U.S. 941.)

§ 4.191 Complaints and compliance assistance.

(a) Any employer, employee, labor or trade organization contracting agency, or other interested person or organization may report to any office of the Wage and Hour Division (or to any office of the Occupational Safety and Health Administration, in instances involving the safety and health provisions), a violation, or apparent violation, of the Act, or of any of the rules or regulations prescribed thereunder. Such offices are also available to assist or provide information to contractors or subcontractors desiring to insure that their practices are in compliance with the Act. Information furnished is treated confidentially. It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a confidential written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal his identity, will not be disclosed without the prior consent of the employee. Disclosure of employee statements shall be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see 29 CFR Part 70) and the "Privacy Act of 1974" (5 U.S.C. 552a).

(b) A report of breach or violation relating solely to safety and health requirements may be in writing and addressed to the Regional Administrator of an Occupational Safety and Health Administration Regional Office, U.S. Department of Labor, or to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

(c) Any other report of breach or violation may be in writing and addressed to the Assistant Regional Administrator of a Wage and Hour Division's regional office, U.S. Department of Labor, or to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210.

(d) In the event that an Assistant Regional Administrator for the Wage and Hour Division, Employment Standards Administration, is notified of a breach or violation which also involves safety and health standards, the Regional Administrator of the Employment Standards Administration shall notify the appropriate Regional Administrator of the Occupational Safety and Health Administration who shall with respect to the safety and health violation take action commensurate with his responsibilities pertaining to safety and health standards.

(e) Any report should contain the following:

(1) The full name and address of the person or organization reporting the breach or violations.

(2) The full name and address of the person against whom the report is made.

(3) A clear and concise statement of the facts constituting the alleged breach or violation of any of the provisions of the McNamara-O'Hara Service Contract Act, or of any of the rules or regulations prescribed thereunder.

PART 6—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS ENFORCING LABOR STANDARDS IN FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION CONTRACTS AND FEDERAL SERVICE CONTRACTS

NOTE: Part 6 was revised at 46 FR 4400, Jan. 16, 1981, effective February 17, 1981. In accordance with the President's Memorandum of January 29, 1981, the effective date was postponed to March 30, 1981, at 46 FR 11253, Feb. 6, 1981, and subsequently postponed to the dates listed below.

May 1, 1981 (46 FR 18973, Mar. 27, 1981)
July 1, 1981 (46 FR 23739, Apr. 28, 1981)
July 15, 1981 (46 FR 33514, June 30, 1981)
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Indefinitely (46 FR 41045, Aug. 14, 1981)

In order to determine the effective date of Part 6 after the revision date of this volume, the user must consult the daily FEDERAL REGISTER.

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AUTHORITY: Secs. 4 and 5, 79 Stat. 1034, 1035 as amended by 86 Stat. 789, 790, 41 U.S.C. 353 and 354; 5 U.S.C. 301; Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. Appendix; 46 Stat. 1494, as amended by 49 Stat. 1011, 78 Stat. 238, 40 U.S.C. 276a-276a-7; 76 Stat. 357-359, 40 U.S.C. 327-332; 48 Stat. 948, as amended by 63 Stat. 108, 72 Stat. 967, 40 U.S.C. 276c.

SOURCE: 46 FR 4400, Jan. 16, 1981, unless otherwise noted.

Subpart A—General

§ 6.1 Applicability of rules.

This part provides the rules of practice for administrative proceedings under the Service Contract Act, the Davis-Bacon Act and related statutes listed in § 5.1 of Part 5 of this title which require payment of wages determined in accordance with the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Act. See Parts 4 and 5 of this title.

§ 6.2 Definitions.

(a) "Administrator" means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.

(b) "Associate Solicitor" means the Associate Solicitor for General Legal Services, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20210.

(c) "Chief Administrative Law Judge" means the Chief Administrative Law Judge, U.S. Department of Labor, 1111 20th Street, N.W., Suite 700, Washington, D.C. 20036.

(d) "Respondent" means the contractor, subcontractor, person alleged to be responsible under the contract or subcontract, and/or any firm, corporation, partnership, or association in which such person or firm is alleged to have a substantial interest (or interest if the proceeding is under the Davis-Bacon Act) against whom the proceedings are brought.

§ 6.3 Service; copies of documents and pleadings.

(a) *Manner of service.* Service upon any party shall be made by the party filing the pleading or document by delivering a copy or mailing a copy to the last known address. When a party is represented by an attorney, the service should be upon the attorney. For purposes of this part, filing is accomplished upon the day of service, by mail or otherwise.

(b) *Proof of service.* A certificate of the person serving the pleading or other document by personal delivery or by mailing, setting forth the manner of said service shall be proof of the service. Where service is made by mail, service shall be complete upon mailing.

(c) *Service upon Department, number of copies of pleading or other documents.* An original and three copies of all pleadings and other documents shall be filed with the Department of Labor: The original and one copy with the Administrative Law Judge before whom the case is pending, one copy with the attorney representing the Department during the hearing, and one copy with the Associate Solicitor.

§ 6.4 Computation of time.

Saturdays, Sundays, and holidays shall be included in computing the time allowed for filing any document or paper under this part, but when such time expires on such a day, such period shall be extended to include the next following day which is not a Saturday, Sunday or holiday.

§ 6.5 Motions and requests.

Motions or requests or any matter, including discovery, shall be filed with the Chief Administrative Law Judge, except that those made during the course of the hearing shall be filed with the Administrative Law Judge or shall be stated orally and made part of the transcript. Each motion or request shall state the particular order, ruling, or action desired, and the grounds therefor. The Administrative Law Judge is authorized to rule upon all motions or requests filed or made prior to the filing of the decision.

§ 6.6 Depositions.

(a) *When, how, and by whom taken.* For good cause shown, the testimony of any witness may be taken by deposition in any proceeding, after a complaint has been filed. Depositions may be taken upon written interrogatories or orally before any person having power to administer oaths.

(b) *Application.* Any party desiring to take the deposition of a witness shall make application in writing to the Administrative Law Judge, setting forth the reasons why such deposition should be taken; the time when, the place where, and the name and address of the person before whom the deposition is to be taken; the name and address of each witness; and the subject matter concerning which each witness is expected to testify.

(c) *Notice.* Such notice as the Administrative Law Judge shall order shall be given for the taking of a deposition, but this shall not be less than 5 days' written notice when the deposition is to be taken within the United States and not less than 20 days' written notice when the deposition is to be taken elsewhere.

(d) *Taking and receiving in evidence.* Each witness testifying upon deposition shall be sworn, and, with respect to oral depositions, the adverse party shall have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to and subscribed by the witness, and certified by the officer authorized to administer oaths. Thereafter, the officer shall seal the deposition, with two copies thereof, in an envelope and mail the same by registered mail to the Administrative Law Judge. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present or represented at the taking of the deposition or who had due notice thereof. No part of a deposition shall be admitted in evidence except for the limited purpose of impeachment, unless there is a showing that the witness is unavailable to testify (including a witness who cannot be subpoenaed or who is located outside of the State in which the hearing is held) or unless the parties stipulate regarding use of the deposition.

§ 6.7 Subpoenas.

All applications under the Service Contact Act for subpoenas ad testificandum and subpoenas duces tecum shall be made in writing to the Administrative Law Judge. Application for subpoenas duces tecum shall specify as exactly as possible the documents to be produced, showing their general relevancy and reasonable scope.

§ 6.8 Production of documents and witnesses.

The parties, who shall be deemed to be the Department of Labor and the respondent(s), may serve on any other party a request to produce documents or witnesses in the control of the party served, setting forth with particularity the documents or witnesses requested. The party served shall have 15 days to respond or object thereto unless a shorter or longer time is ordered by the Administrative Law Judge. The parties shall produce documents and witnesses to which no privilege attaches which are in the control of the party, if so ordered by the Administrative Law Judge upon motion therefor by a party. If a privilege is claimed, it must be specifically claimed in writing prior to the hearing or orally at the hearing, including the reasons therefor. In no event shall a statement taken in confidence by the Department of Labor or other Federal agency be ordered to be produced prior to the date of testimony at trial of the person whose statement is at issue unless the consent of such person has been obtained.

§ 6.9 Witnesses and fees.

Witnesses subpoenaed by any party shall be paid the same fees and mileage as are paid for like services in the District Court of the United States. The witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

§ 6.10 Administrative Law Judge.

(a) *Who presides.* All hearings shall be presided over by an Administrative Law Judge appointed under section 11 of the Administrative Procedure Act.

(b) *How assigned.* The presiding Administrative Law Judge shall be designated by the Chief Administrative Law Judge.

(c) *Powers.* Administrative Law Judges shall have all powers necessary to the conduct of fair and impartial hearings, including the following:

(1) To administer oaths and affirmations;

(2) To issue subpoenas in proceedings under the Service Contract Act upon proper applications as provided in § 6.7 of this title;

(3) To rule upon offers of proof and receive relevant evidence;

(4) To take or cause to be taken depositions and to determine their scope;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel therein;

(6) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) To consider and rule upon procedural requests;

(8) To make and file decisions in conformity with this part;

(9) To take any action authorized by the rules in this part or in conformance with the Administrative Procedure Act.

(d) *Consultation.* The Administrative Law Judge shall not consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate.

(e) *Disqualification of Administrative Law Judge.* (1) When an Administrative Law Judge deems himself/herself disqualified to preside in a particular proceeding, he/she shall withdraw therefrom by notice on the record directed to the Chief Administrative Law Judge.

(2) Whenever any party believes the Administrative Law Judge for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, that party shall file with the Chief Administrative Law Judge a motion to disqualify and remove such Administrative Law Judge, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. The Chief Administrative Law Judge shall rule upon the motion.

(f) *Contemptuous conduct: failure or refusal of a witness to appear or answer.* Contemptuous conduct at any hearing before an Administrative Law Judge shall be ground for exclusion from the hearing. The failure or refusal of a witness to appear at any hearing when so ordered by the Administrative Law Judge, or to answer any question which has been ruled to be proper, shall be ground for the action provided in section 5 of the Act of June 30, 1936 (41 U.S.C. 39) and, in the discretion of the Administrative Law Judge, for striking out all or part of the testimony which may have been given by such witness.

§ 6.11 Prehearing conferences.

(a) Upon his/her own motion or the motion of the parties, the Administrative Law Judge may direct the parties or their counsel to meet with the Administrative Law Judge for a conference to consider:

(1) Simplification of the issues;

(2) Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitation;

(3) Stipulations, admissions of fact and contents and authenticity of documents;

(4) Limitation of the number of expert witnesses; and

(5) Such other matters as may tend to expedite the disposition of the proceeding.

(b) The record shall show the matters disposed of by order and by agreement in such pretrial conferences. The subsequent course of the proceedings shall be controlled by such action.

§ 6.12 Appearances.

(a) *Representation.* The parties may appear in person, by counsel, or otherwise.

(b) *Failure to appear.* In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present shall have an election to present evidence in whole or such portion thereof sufficient to make a prima facie case before the Administrative Law Judge. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Administrative Law Judge's decision and to file a petition for review thereof with the Secretary or the Wage Appeals Board, as appropriate, *Provided, however,* That no such petition for review may be filed concerning any findings of fact of the Administrative Law Judge or concerning the admissibility of evidence.

§ 6.13 Hearing.

(a) *Order of proceeding.* Except as may be determined otherwise by the Administrative Law Judge or where the only issue in the proceeding is the existence of unusual circumstances under section 5(a) of the Service Contract Act, counsel for the Department of Labor shall proceed first at the hearing.

(b) *Evidence*—(1) *In general.* The testimony of witnesses shall be upon oath or affirmation administered by the Administrative Law Judge and shall be subject to such cross-examination as may be required for a full and true disclosure of the facts. The Administrative Law Judge may exclude evidence which is immaterial, irrelevant, or unduly repetitious.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, the party shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the Administrative Law Judge may be

relied upon subsequently in the proceeding. Formal exception to an adverse ruling is not required.

(c) *Official notice.* Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice and also concerning which the Department of Labor by reason of its functions is presumed to be expert: *Provided,* That the parties shall be given adequate notice at the hearing or by reference in the Administrative Law Judge's decision of the matters so noticed, and shall be given adequate opportunity to show the contrary.

(d) *Transcript.* A transcript shall be made of the proceeding.

§ 6.11 Transmission of record.

If a petition for review of the Administrative Law Judge's decision is filed with the Secretary or the Wage Appeals Board, the Chief Administrative Law Judge shall promptly transmit the record of the proceeding. The record shall include: The pleadings, motions, and requests filed in written form, rulings thereon, the transcript of the testimony and proceeding taken at the hearing, together with the exhibits admitted in evidence, and documents or papers filed in connection with prehearing conferences, such proposed findings of fact, conclusions of law, orders, and supporting reasons, as may have been filed, the Administrative Law Judge's decision, and such other documents as may have been filed in the proceeding. If a petition for review is not filed within the time prescribed in this part, the Chief Administrative Law Judge shall so advise the Administrator.

Subpart B—Enforcement Proceedings Under the Service Contract Act (and Under the Contract Work Hours and Safety Standards Act for Contracts Subject to the Service Contract Act)

§ 6.20 Complaints.

(a) Enforcement proceedings under the Service Contract Act and under the Contract Work Hours and Safety Standards Act for contracts subject to the Service Contract Act, may be instituted by the Deputy Solicitor or a Regional Solicitor by issuing a complaint and causing the complaint to be served upon the respondent.

(b) The complaint shall contain a clear and concise factual statement of the grounds for relief and the relief requested.

(c) The Administrative Law Judge shall notify the parties of the time and place for a hearing.

§ 6.21 Answer.

(a) Within 20 days after the service of the complaint, the respondent shall file an answer with the Chief Administrative Law Judge. The answer shall be signed by the respondent or his/her attorney.

(b) The answer shall (1) contain a statement of the facts which constitute the grounds of defense, and shall specifically admit, explain, or deny, each of the allegations of the complaint unless the respondent is without knowledge, in which case the answer shall so state; or (2) state that the respondent admits all of the allegations of the complaint. The answer may contain a waiver of hearing. Failure to file an answer to or plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

(c) Failure to file an answer shall constitute grounds for waiver of hearing and entry of a default judgment unless respondent shows good cause for such failure to file. In preparing the decision of default judgment the Administrative Law Judge shall adopt as findings of fact the material facts alleged in the complaint and shall order the appropriate relief and/or sanctions.

§ 6.22 Amendments to pleadings.

At any time prior to the close of the hearing record, the complaint or answer may be amended with the permission of the Administrative Law Judge and on such terms as he/she may approve. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

§ 6.23 Consent findings and order.

(a) At any time prior to the receipt of evidence or, at the discretion of the Administrative Law Judge, prior to the issuance of the decision of the Administrative Law Judge, the parties may enter into consent findings and an order disposing of the proceedings in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge and Secretary regarding those matters which are the subject of the agreement; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall accept such agreement by issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

§ 6.24 Decision of the Administrative Law Judge.

(a) *Proposed findings of fact, conclusions, and order.* Within 30 days of filing of the transcript of the testimony or such additional time as the Administrative Law Judge may allow, each party may file with the Administrative Law Judge proposed findings of fact, conclusions of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the Administrative Law Judge.* (1) Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and order, or within 30 days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her decision. If any aggrieved party desires review of the decision, a petition for review thereof shall be filed as provided in § 6.25 of this title, and such decision and order shall be inoperative unless and until the Secretary issues an order affirming the decision. The decision of the Administrative Law Judge shall include findings of fact and conclusions of law, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. The decision of the Administrative Law Judge shall be based upon a consideration of the whole record, including any admissions made under §§ 6.21, 6.22, and 6.23 of this title. It shall be supported by reliable, probative, and substantial evidence. Such decision shall be in accordance with the regulations and rulings continued in Parts 4 and 5 and other pertinent parts of this title.

(2) If the respondent is found to have violated the Service Contract Act, the Administrative Law Judge shall include in his/her decision an order as to whether the respondent is to be relieved from the ineligible list as provided in Section 5(a) of the Act, and, if relief is ordered, findings of the unusual circumstances, within the meaning of Section 5(a) of the Act, which are the basis therefor. If respondent is found to have violated the provisions of the Contract Work Hours and Safety Standards Act, the Administrative Law Judge shall issue an order as to whether the respondent is to be subject to the ineligible list as provided in § 5.12(a)(1) of Part 5 of this title, including findings regarding the existence of aggravated or willful violations. If wages and/or fringe benefits are found due under the Serv-

ice Contract Act and/or the Contract Work Safety Standards Act and are unpaid, no relief from the ineligible list shall be ordered except on condition that such wages and/or fringe benefits are paid.

(3) The Administrative Law Judge shall make no findings regarding liquidated damages under the Contract Work Hours and Safety Standards Act.

§ 6.25 Petition for review.

Within 40 days after the date of the decision of the Administrative Law Judge (or such additional time as is granted by the Secretary), any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Secretary pursuant to Subpart E, with a copy thereof to the Chief Administrative Law Judge. The petition shall refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on the ineligibility list shall also state the unusual circumstances or lack thereof under the Service Contract Act, and/or the aggravated or willful violations of the Contract Work Hours and Safety Standards Act or lack thereof, as appropriate.

§ 6.26 Ineligible list.

(a) Upon the final decision of the Administrative Law Judge or Secretary, as appropriate, the Administrator shall promptly forward to the Comptroller General the name of any respondent found in violation of the Service Contract Act, including the name of any firm, corporation, partnership, or association in which the respondent has a substantial interest, unless such decision orders relief from the ineligible list because of unusual circumstances.

(b) Upon the final decision of the Administrative Law Judge or the Secretary, as appropriate, the Administrator promptly shall forward to the Comptroller General the name of any respondent found to be in aggravated or willful violation of the Contract Work Hours and Safety Standards Act, and the name of any firm, corporation, partnership, or association in which the respondent has a substantial interest.

Subpart C—Enforcement Proceedings Under the Davis-Bacon Act and Related Prevailing Wage Statutes, the Copeland Act, and the Contract Work Hours and Safety Standards Act (Except Under Contracts Subject to the Service Contract Act)

§ 6.30 Referral to Chief Administrative Law Judge.

(a) Upon timely receipt of a request for a hearing under §§ 5.11 (where the Administrator has determined that relevant facts are in dispute) or 5.12 of Part 5 of this title, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the notification letter to the respondent from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to decide the disputed matters. A copy of the Order of Reference and attachments thereto shall be served upon the respondent.

(b) The notification letter from the Administrator and response thereto shall be given the effect of a complaint and answer, respectively, for purposes of the administrative proceedings. The notification letter and response shall be in accordance with the provisions of § 5.11 or § 5.12(b)(1) of Part 5 of this title, as appropriate.

§ 6.31 Amendments to pleadings.

At any time prior to the closing of the hearing record, the complaint (notification letter) or answer (response) may be amended with the permission of the Administrative Law Judge and upon such terms as he/she may approve. For proceedings pursuant to § 5.11 of Part 5 of this title, such an amendment may include a statement that debarment action is warranted under § 5.12(a)(1) of Part 5 of this title or under Section 3(a) of the Davis-Bacon Act. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

§ 6.32 Consent findings and order.

(a) At any time prior to the receipt of evidence or, at the discretion of the Administrative Law Judge, prior to the issuance of the decision of the Administrative Law Judge, the parties may enter into consent findings and an order disposing of the proceeding in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) That any order concerning debarment under the Davis-Bacon Act (but not under any of the other statutes listed in § 5.1 of Part 5 of this title) shall constitute a recommendation to the Comptroller General;

(4) A waiver of any further procedural steps before the Administrative Law Judge and the Wage Appeals Board regarding those matters which are the subject of the agreement; and

(5) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall accept such agreement by issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

§ 6.33 Decision of the Administrative Law Judge.

(a) *Proposed findings of fact, conclusions, and order.* Within 30 days of filing of the transcript of the testimony or such additional time as the Administrative Law Judge may allow, each party may file with the Administrative Law Judge proposed findings of fact, conclusions of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the Administrative Law Judge.* (1) Within a reasonable time after the time allowed for filing of proposed findings of fact, conclusions of law, and order, or within 30 days of receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her decision. If any aggrieved party desires review of the decision, a petition for review thereof shall be filed as provided in § 6.34 of this title, and such decision and order shall be inoperative unless and until the Wage Appeals Board either declines to review the decision or issues an order affirming the decision. The decision of the Administrative Law Judge shall include findings of fact and conclusions of law, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. Such decision shall be in accordance with the regulations and rulings contained in Part 5 and other pertinent parts of this title. The decision of the Administrative Law Judge shall be based upon a consideration of the whole record, including any admissions made in the respondent's answer (response) and § 6.32 of this title. It shall be supported by reliable, probative, and substantial evidence.

(2) If the respondent is found to have violated the labor standards provisions of any of the statutes listed in § 5.1 of Part 5 of this title other than the Davis-Bacon Act, and if debarment action was requested pursuant to the complaint (notification letter) or any amendment thereto, the Administrative Law Judge shall issue an order as to whether the respondent is to be subject to the ineligible list as provided in § 5.12(a)(1) of this title, in-

cluding any findings of aggravated or willful violations. If the respondent is found to have violated the Davis-Bacon Act, and if debarment action was requested, the Administrative Law Judge shall issue as a part of the order a recommendation as to whether respondent should be subject to the ineligible list pursuant to Section 3(a) of the Act, including any findings regarding respondent's disregard of obligations to employees and subcontractors. If wages are found due and are unpaid, no relief from the ineligible list shall be ordered or recommended except on condition that such wages are paid.

(3) The Administrative Law Judge shall make no findings regarding liquidated damages under the Contract Work Hours and Safety Standards Act.

§ 6.34 Petition for review.

Within 40 days after the date of the decision of the Administrative Law Judge (or such additional time as is granted by the Wage Appeals Board), any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Wage Appeals Board, pursuant to Part 7 of this title, with a copy thereof to the Chief Administrative Law Judge. The petition shall refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on debarment shall also state the aggravated or willful violations and/or disregard of obligations to employees and subcontractors, or lack thereof, as appropriate.

§ 6.35 Ineligible list.

Upon the final decision of the Administrative Law Judge or Wage Appeals Board, as appropriate, regarding violations of any statute listed in § 5.1 of this title other than the Davis-Bacon Act, the Administrator promptly shall forward to the Comptroller General the name of any respondent found to have committed aggravated or willful violations of the labor standards provisions of such statute, and the name of any firm, corporation, partnership, or association in which such respondent has a substantial interest. Upon the final decision of the Administrative Law Judge or Wage Appeals Board, as appropriate, regarding violations of the Davis-Bacon Act, the Administrator promptly shall forward to the Comptroller General any recommendation regarding debarment action against a respondent, and the name of any firm, corporation, partnership, or association in which such respondent has an interest.

Subpart D—Substantial Interest Proceedings

§ 6.40 Scope.

This subpart supplements the procedures contained in § 4.12 and § 5.12(d) of this title, and states the rules of practice applicable to hearings to determine whether persons or firms whose names appear on the ineligible list pursuant to section 5(a) of the Service Contract Act or § 5.12(a)(1) of this title have a substantial interest in any firm, corporation, partnership, or association other than those listed on the ineligible list; and/or to determine whether persons or firms whose names appear on the ineligible list pursuant to section 3(a) of the Davis-Bacon Act have an interest in any firm, corporation, partnership, or association other than those listed on the ineligible list.

§ 6.41 Referral to Chief Administrative Law Judge.

(a) Upon timely receipt of a request for a hearing under § 4.12 or § 5.12 of this title, where the Administrator has determined that relevant facts are in dispute, or on his/her own motion, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of any findings of the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to decide the disputed matters. A copy of the Order of Reference and attachments thereto shall be served upon the person or firm requesting the hearing, if any, and upon the respondents.

(b) The findings of the Administrator and response thereto shall be given the effect of a complaint and answer, respectively, for purposes of the administrative proceedings.

§ 6.42 Amendments to pleadings.

At any time prior to the closing of the hearing record, the complaint (Administrator's findings) or answer (response) may be amended with the permission of the Administrative Law Judge and upon such terms as he/she may approve. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

§ 6.43 Consent findings and order.

(a) At any time prior to the receipt of evidence or, at the discretion of the Administrative Law Judge, prior to the issuance of the decision of the Administrative Law Judge, the parties may enter into consent findings and an order disposing of the proceeding in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge and the Secretary or Wage Appeals Board, as appropriate, regarding those matters which are the subject of the agreement; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall accept such agreement by issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

§ 6.44 Decision of the Administrative Law Judge.

(a) *Proposed findings of fact, conclusions, and order.* Within 30 days of filing of the transcript of the testimony, each party may file with the Administrative Law Judge proposed findings of fact, conclusions of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the Administrative Law Judge.* Within 60 days after the time allowed for filing of proposed findings of fact, conclusions of law, and order, or within 30 days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her decision. If any aggrieved party desires review of the decision, a petition for review thereof shall be filed as provided in § 6.45 of this title, and such decision and order shall be inoperative unless and until the Secretary or the Wage Appeals Board, as appropriate, issues an order affirming the decision. The decision of the Administrative Law Judge shall include findings of fact and conclusions of law, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. Such decision shall be in accordance with the regulations and rulings contained in Parts 4 and 5 and other pertinent parts of this title. The decision of the Administrative Law Judge shall be based upon a consideration of the whole record, including any admissions made in the respondents' answer (response) and § 6.43 of this title.

§ 6.45 Petition for review.

Within 30 days after the date of the decision of the Administrative Law Judge, any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Secretary if the proceeding was under the Service Contract Act, or to the Wage Appeals Board if the proceeding was under § 5.12(a)(1) of this title or under Section 3(a) of the Davis-Bacon Act, with a copy thereof to the Chief Administrative Law Judge. The petition for review shall refer to the specific findings of fact, conclusions of law, or order at issue.

§ 6.46 Ineligible list.

Upon the final decision of the Administrative Law Judge, Secretary or Wage Appeals Board, as appropriate, the Administrator promptly shall forward to the Comptroller General the names of any firm, corporation, partnership, or association in which a person or firm debarred pursuant to Section 5(a) of the Service Contract Act or § 5.12(a) of Part 5 of this title has a substantial interest; and/or the name of any firm, corporation, partnership, or association in which a person or firm debarred pursuant to Section 3(a) of the Davis-Bacon Act has an interest.

Subpart E—Substantial Variance and Arm's-Length Proceedings

§ 6.50 Scope.

This subpart supplements the procedures contained in §§ 4.10 and 4.11 of this title and states the rules of practice applicable to hearings under Section 4(c) of the Act to determine whether the collectively bargained wages and/or fringe benefits otherwise required to be paid under that section and Sections 2(a) (1) and (2) of the Act are substantially at variance with those which prevail for services of a character similar in the locality, and/or to determine whether the wages and/or fringe benefits provided in the collective bargaining agreement were reached as a result of arm's-length negotiations.

§ 6.51 Referral to Chief Administrative Law Judge.

(a) Referral pursuant to § 4.10 or § 4.11 of this title will be by an Order of Reference from the Administrator to the Chief Administrative Law Judge, to which will be attached the material submitted by the applicant or any other material the Administrator considers relevant and, for proceedings pursuant to § 4.11 of this title, a copy of any findings of the Administrator. A copy of the Order of Reference and all attachments will be sent by mail to the following parties: the agency whose contract is involved, the parties to the collective bargaining agreement, any contractor or subcontractor performing on the contract, any contractor or subcontractor known to be desirous of bidding thereon or performing services thereunder who is known or believed to be interested in the determination of the issue, any unions or other authorized representatives of service employees employed or who may be expected to be employed by such contractor or subcontractor on the contract work, and any other affected parties known to be interested in the determination of the issue. The Order of Reference will have attached a certificate of service naming all interested parties who have been served.

(b) Accompanying the Order of Reference and attachments will be a notice advising that any interested party, including the applicant, who intends to participate in the proceeding shall submit a written response to the Chief Administrative Law Judge within 20 days of the date on which the certificate of service indicates the Order of Reference was mailed. The notice will state that such a response shall include:

(1) A statement of the interested party's case;

(2) A list of witnesses the interested party will present, a summary of the testimony each is expected to give, and copies of all exhibits proposed to be proffered;

(3) A list of persons who have knowledge of the facts for whom the interested party requests that subpoenas be issued and a brief statement of the purpose of their testimony; and

(4) A certificate of service in accordance with § 6.3 of this title on all interested parties, including the Administrator.

§ 6.52 Appointment of Administrative Law Judge and notification of prehearing conference and hearing date.

Upon receipt from the Administrator of an Order of Reference, notice to the parties, attachments and certificate of service, the Chief Administrative Law Judge shall appoint an Administrative Law Judge to hear the case. The Administrative Law Judge shall promptly notify all interested parties of the time and place of a prehearing conference and of the hearing which shall be held immediately upon the completion of prehearing conference. The date of the prehearing conference and hearing shall be not less than 30 nor more than 40 days from the date on which the certificate of service indicates the Order of Reference was mailed.

§ 6.53 Prehearing Conference.

(a) At the prehearing conference the Administrative Law Judge shall attempt to determine the exact areas of agreement and disagreement raised by the Administrator's Order of Reference and replies thereto, so that the evidence and arguments presented at the hearing will be relevant, complete, and as brief and concise as possible.

(b) Any interested party desiring to file proposed findings of fact and conclusions of law shall submit them to the Administrative Law Judge at the prehearing conference.

(c) If the parties agree that no hearing is necessary to supplement the written evidence and the views and arguments that have been presented, the Administrative Law Judge shall forthwith render his/her final decision. The Administrative Law Judge with the agreement of the parties may permit submission of additional written evidence or argument, such as data accompanied by affidavits attesting to its validity or depositions, within ten days of commencement of the prehearing conference.

§ 6.54 Hearing.

(a) Except as provided in § 6.53(c) of this title, the hearing shall commence immediately upon the close of the prehearing conference. All matters remaining in controversy, including the presentation of additional evidence, shall be considered at the hearing. There shall be a minimum of formality in the proceeding consistent with orderly procedure.

(b) To expedite the proceeding the Administrative Law Judge shall, after consultation with the parties, set reasonable guidelines and limitations for the presentations to be made at the hearing. The Administrative Law Judge may limit cross-examination and may question witnesses.

(c) Under no circumstances shall source data obtained by the Bureau of Labor Statistics, U.S. Department of Labor, or the names of establishments contacted by the Bureau be submitted into evidence or otherwise disclosed. Where the Bureau has conducted a survey, the published summary of the data may be submitted into evidence.

(d) Affidavits or depositions may be admitted at the discretion of the Administrative Law Judge. The Administrative Law Judge may also require that unduly repetitious testimony be submitted as affidavits. Such affidavits shall be submitted within three days of the conclusions of the hearing.

(e) Counsel for the Administrator shall participate in the proceeding to the degree he/she deems appropriate.

(f) An expedited transcript shall be made of the hearing and of the prehearing conference.

§ 6.55 Closing of record.

The Administrative Law Judge shall close the record promptly and not later than 10 days after the date of commencement of the prehearing conference. Post-hearing briefs may be permitted, but the filing of briefs shall not delay issuance of the decision of the Administrative Law Judge pursuant to § 6.56 of this title.

§ 6.56 Decision of the Administrative Law Judge.

Within 15 days of receipt of the transcript, the Administrative Law Judge shall render his/her decision containing findings of fact and conclusions of law. The decision of the Administrative Law Judge shall be based upon consideration of the whole record, and shall be in accordance with the regulations and rulings contained in Part 4 and other pertinent parts of this title. If any party desires review of the decision, a petition for review thereof shall be filed as provided in § 6.57 of this title, and such decision and order shall be inoperative unless and until the Secretary issues an order affirming the decision. If a petition has not been filed within 10 days of issuance of the Administrative Law Judge's decision, the Administrator shall promptly issue any wage determination which may be required as a result of the decision.

§ 6.57 Petition for review.

Within 10 days after the date of the decision of the Administrative Law Judge, any interested party who participated in the proceedings before the Administrative Law Judge and desires review of the decision shall file a petition for review by the Secretary. The petition shall refer to the specific findings of fact, conclusions of law, or order excepted to and the specific pages of transcript relevant to the petition for review.

Subpart F—Appeals From Decisions Under the Service Contract Act (and Under the Contract Work Hours and Safety Standards Act for Contracts Subject to the Service Contract Act)

§ 6.60 Scope.

This subpart contains the rules regarding appeals to the Secretary from decisions of Administrative Law Judges under the Service Contract Act pursuant to Subparts B, D and E of this part, and from wage determinations and other final decisions of the Administrator or authorized representative under the Service Contract Act. These rules also apply to appeals to the Secretary from decisions under the Contract Work Hours and Safety Standard Act for contracts subject to the Service Contracts Act, issued by Administrative Law Judges pursuant to Subpart B of this part.

§ 6.61 Petitions for Review of Wage Determinations.

(a) Any interested party who is seeking a modification or other change in a wage determination under the Service Contract Act and who has requested the Administrator or authorized representative to make such modification or other change under § 4.55 of Part 4 of this title, and the request has been denied, shall have a right to petition for review of the action taken by that officer.

(b) For purposes of this subpart, the term "interested party" shall mean:

(1) Any employee or any labor orgainzation which represents an employee who is likely to be employed or to seek employment under a contract containing a particular wage determination, or any contractor or association representing a contractor who is likely to seek a contract or to work under a contract containing a particular wage determination;

(2) The Federal agency(ies) which will administer a proposed contract containing a particular wage determination issued pursuant to the Service Contract Act; and

(3) Any other party whom the Secretary finds to have a sufficient interest in the wage determination.

(c) Requests for review of wage determinations must be filed within 20 days of issuance of the Administrator's decision denying a request to make a change in the wage determination. The Secretary shall under no circumstances request any administering agency to postpone any contract action because of the filing of a petition.

(d) A petition for review of a wage determination shall:

(1) Be in writing and signed by the petitioner or his/her counsel (or other authorized representative);

(2) Be addressed to the Secretary;

(3) Identify clearly the wage determination, location where the contract will be performed, if known, and the agency concerned;

(4) State that the petitioner has requested reconsideration of the wage determination in question and describe briefly the action taken in response to the request;

(5) Contain a short and plain statement of the grounds for review;

(6) Be accompained by supporting data, views, or arguments; and

(7) Contain a statement that all data or other evidence submitted have previously been submitted to the Administrator.

(e) Except as provided in paragraphs (d)(1) and (2) of this section, the Secretary will not review a wage determination after award, exercise of option, or extension of a contract, unless such procurement action was taken without the wage determination required pursuant to §§ 4.4 and 4.5 of Part 4 of this title.

(1) A wage determination may be reviewed after award, exercise of option, or extension of a contract if it is issued after a finding by an Administrative Law Judge that a substantial variance exists between collectively bargained wage rates and/or fringe benefits otherwise required to be paid pursuant to Section 4(c) of the Act and those prevailing for services of a character similar in the locality, or after a finding that such collective bargaining agreement was not reached as a result of arm's length negotiations.

(2) Where a petition for review of a wage determination is filed prior to award, exercise of option, or extension of a contract, the Secretary may review the wage determination after such award, exercise of option, or extension of a contract if the issue is a significant issue of general applicability. The Secretary's decision shall not affect the contract after such award, exercise of option or extension.

§ 6.62 Petitions for Review of Other Decisions.

(a) A petition for review of a decision of an Administrative Law Judge pursuant to Subparts B, D or E of this part shall be filed in accordance with the provisions therein.

(b) A petition for review of a final written decision (other than a wage determination) of the Administrator or authorized representative shall be filed within 60 days of the date of the decision of which review is sought. Where a case has been referred directly to the Secretary pursuant to § 4.11 or § 4.12 of this title, no petition for review shall be necessary; a brief in support of the aggrieved party's position shall be filed within 30 days of filing of the administrative record by the Administrator.

(c) The petition shall state concisely the points relied upon, and shall be accompanied by a statement setting forth supporting reasons.

§ 6.63 Filing and Service.

(a) *Filing.* An original and one copy of all papers submitted shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, D.C. 20210, Attention: Service Contract Act Appeals.

(b) *Manner of Service.* Service shall be personal or by mail. Service by mail is complete on mailing. For purposes of this subpart, filing is accomplished upon the day of service, by mail or otherwise.

(c) *Proof of Service.* Papers filed with the Secretary shall contain an acknowledgement of service by the person served or proof of service in the form of a statement of the date and the manner of service and the names of the person or persons served, certified by the person who made service.

(d) *Service upon the Department of Labor and other interested parties.* A copy of all documents filed shall be served upon the Associate Solicitor, Division of General Legal Services, U.S. Department of Labor, Washington, D.C. 20210; the Administrator; the Federal contracting agency involved; and all other interested parties.

§ 6.64 Filing of administrative record.

(a) If a petition for review has been filed concerning a decision pursuant to Subparts B, D or E of this part, the Chief Administrative Law Judge shall promptly forward the record of the proceeding before the Administrative Law Judge to the Secretary.

(b) If a petition for review has been filed concerning a wage determination or other final decision of the Administrator or authorized representative, the Associate Solicitor shall promptly file a record upon which the decision was based. The record of a wage determination shall under no circumstances include source data obtained by the Bureau of Labor Statistics, U.S. Department of Labor, or the names of establishments contacted by the Bureau.

Where the Bureau has conducted a survey, the published summary of the data may be filed.

§ 6.65 Presentations of other interested parties.

(a) Where a petition has been filed for review of a wage determination or other final decision of the Administrator or authorized representative, the Wage and Hour Division shall notify the parties known or believed to be interested in the case. The Associate Solicitor and any other parties interested in presenting their views shall file a statement within 30 days of the filing of the petition (or such other time as is specified by the Secretary, with consideration of procurement deadlines, as appropriate).

(b) Where a petition has been filed for review of a decision issued pursuant to Subparts B, D or E of this part, any other parties to the proceeding interested in presenting their views shall file a statement within 30 days of the filing of the petition (or such other time as is specified by the Secretary, with consideration of procurement deadlines, as appropriate).

§ 6.66 Decision of the Secretary.

(a) The Secretary will issue his/her decision upon the basis of the entire record. The Secretary may affirm, modify or set aside, in whole or in part, the decision under review and will issue a decision including a statement of reasons or bases for the actions taken. The Secretary, in his/her decision, will observe the provisions of pertinent portions of the Code of Federal Regulations and, in reviewing decisions of Administrative Law Judges pursuant to Subparts B, D and E of this part, will modify or set aside findings of fact only when the Secretary has determined that those findings are not supported by substantial evidence. In any remand of a case, the Secretary will include any appropriate instructions.

(b) In issuing decisions, the Secretary will take into consideration procurement deadlines where appropriate.

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List of CFR Sections Affected

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